

By Mr. WOLVERTON of West Virginia: A bill (H. R. 16072) granting an increase of pension to Julia A. Duncan; to the Committee on Invalid Pensions.

By Mr. ZIHLMAN: A bill (H. R. 13073) to authorize the Commissioners of the District of Columbia to sell parcel 31/17, known as the powder-house site; to the Committee on the District of Columbia.

#### PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8508. By Mr. BLANTON: Petition of Hon. M. C. Lambeth, Hon. W. R. Chapman, Hon. M. S. Long, Hon. W. J. Cunningham, Hon. Tom K. Eplin, and 116 other citizens, favoring the passage of House bill 15489, by Hon. JOE J. MANLOVE, in behalf of ex-rangers and Indian war veterans; to the Committee on Pensions.

8509. By Mr. BLOOM: Petition of residents of New York State, urging the passage of House bill 7884, providing for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8510. Also, petition of the executive committee of the board of directors of the American Booksellers' Association, urging the passage of the general copyright revision bill for the reason that it will be of general benefit to the book trade by removing certain hampering conditions under which it is now operating, particularly at a time when such relief is greatly needed; to the Committee on Patents.

8511. By Mr. COLE: Petition of Marion B. Green, of Cedar Rapids, Iowa, and of 116 others, residents of Cedar Rapids, Center Point, and Marion, Iowa, in fifth congressional district, favoring the passage of House bill 7884 for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8512. By Mr. HOPE: Petition of R. H. Smith and 31 others of Little River, Kans., urging an import duty on crude oil; to the Committee on Ways and Means.

8513. By Mr. JOHNSON of Texas: Petition of H. Dignowity, of Baytown, Tex., indorsing the Capper-Reed vocational educational bill, H. R. 10821; to the Committee on Education.

8514. By Mr. KVALE: Petition of Post No. 62, American Legion, Benson, Minn., by J. Skala, commander, urging legislation providing for full and immediate payment of the face value of adjusted-service certificates; to the Committee on Ways and Means.

8515. By Mr. MURPHY: Resolution of John J. Welsh Post, No. 275, American Legion, of Lisbon, Ohio, Hugh Ramsay, adjutant, asking that adjusted-compensation certificates be paid at once at 100 per cent face value; to the Committee on Ways and Means.

8516. By Mrs. OLDFIELD: Petition of Harvey C. Couch, chairman Arkansas drought-relief committee, and others Little Rock, Ark., urging prompt enactment of Senate bill 5540; to the Committee on Appropriations.

8517. By Mr. SEGER: Petition of Albert Hopper, Paul Von Suskil, and 30 other residents of Paterson, N. J., and vicinity, supporting Senator REED's proposal to bar immigration for two years; to the Committee on Immigration and Naturalization.

8518. Also, letter of Vivisection Investigation League, with petition of 147 residents of Paterson, Clifton, and Little Falls, N. J., and vicinity, favoring House bill 7884; to the Committee on the District of Columbia.

## SENATE

MONDAY, JANUARY 12, 1931

(Legislative day of Monday, January 5, 1931)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The Senate will receive a message from the House of Representatives.

#### MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the Speaker had

affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 4803. An act to extend the time for constructing a bridge across the Atchafalaya River at or near Morgan City, La.;

S. 4804. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Atchafalaya River at or near Krotz Springs, La.;

S. 4805. An act to extend the time for construction of a free highway bridge across the Red River at or near Moncla, La.;

S. 4806. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Red River at or near Alexandria, La.;

S. 4807. An act to extend the time for construction of a free highway bridge across the Red River at or near Coushatta, La.;

S. 4808. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Red River at or near Shreveport, La.;

S. 4809. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Ouachita River at or near Sterlington, La.;

S. 4810. An act to extend the time for construction of a free highway bridge across the Ouachita River at or near Monroe, La.;

S. 4811. An act to extend the time for construction of a free highway bridge across the Ouachita River at or near Harrisonburg, La.;

S. 4812. An act to extend the time for construction of a free highway bridge across the Black River at or near Jonesville, La.; and

H. R. 11201. An act to authorize a preliminary examination of the Fox River, Wis., for the purpose of flood control.

#### EXECUTIVE SESSION—TARIFF COMMISSION

The VICE PRESIDENT. Under the order of December 16, 1930, as modified, the Senate, as in executive session, will proceed to the consideration of the nominations of the persons named to be members of the United States Tariff Commission. The question is, Will the Senate advise and consent to the nomination of Henry P. Fletcher to be a member of the United States Tariff Commission?

Mr. WATSON. To that end I move that the Senate proceed to the consideration of executive business.

The motion was agreed to.

#### TRIBUTE TO NATHAN STRAUS

As in legislative session,

Mr. WAGNER. Mr. President, rarely has it been our misfortune to mourn the loss of a nobler soul than Nathan Straus, who was taken from us yesterday. Our heads are bowed with grief that his boundless kindness, his purposeful philanthropy, his statesmanship, and his wisdom should no longer minister to the humanity he loved so well. Neither race nor creed nor color ever constituted boundary to his all-embracing generosity. In America, in Europe, in Palestine stand the numerous monuments to his humanitarian spirit inscribed with the undying affection of every people on earth.

Very rarely did he hold public office, but he continually rendered public service. He coveted no prize for himself but to serve his fellow men. He sought no opportunity but to be more useful to the people about him.

His loss is irreparable. The whole world is poorer by reason of his passing.

This is not the time to detail his marvelous works. No catalogue can do him justice. We may, however, generalize that wherever there was suffering there Nathan Straus's generosity reached out to alleviate it; whenever there was good work to be done his great spirit moved him.

He conferred great honor on Germany, his native land; upon the Jewish people, whose faith he professed; upon the



United States, the land of his adoption and devotion. He passed from our midst, but the love we bear him, the reverence in which we hold him, these will continue forever.

Mr. COPELAND subsequently said: Mr. President, while I was absent in a meeting of the Committee on Appropriations my colleague addressed the Senate in regard to a matter about which I, too, would like to say what is in my heart. I am glad he spoke.

There died in my city yesterday Mr. Nathan Straus. To my mind Mr. Straus was the greatest philanthropist of his generation. He did more for child life and for health protection and advancement, in my opinion, than any other man who ever lived.

When Mr. Straus started his work in New York City, out of every 1,000 babies born 247 died in the first year of life. Now the number is only 50 per 1,000. That has been accomplished, as I view it, largely because of the increased purity of the milk supply.

Mr. Straus early became interested in the subject of pasteurization of milk. In the face of great opposition he impressed upon the commercial distributors of milk the propriety of treating the milk in that way. The result is that to-day in New York City practically every drop of milk sold is pasteurized, and the death rate has dropped as I have stated.

Mr. Straus from his own purse established baby-feeding stations. Physicians and nurses examined ill children and directed their treatment. It was pioneer work, now followed by every enlightened community.

Mr. Straus, after his great work in New York City, went to Germany, to his native town, and started the work there. He established a station in Huddersfield, England, where he demonstrated to the English people the importance of that work. Then he went to Palestine and established his great health institute in Jerusalem. He founded there an institution which is open to all classes and all creeds and all races.

I think we may well afford to turn aside for just a moment to pay a brief tribute to this great man. I feel that his work will live forever. I think that I am within the bounds of reason when I say that Mr. Straus was our greatest philanthropist. His death brings a distinct loss not alone to the people of my city and my State but to the people of the Nation, and because of the nature of his work his death is an international loss.

Personally I take the translation of my friend as a great blow. He was a loyal, devoted, generous man, who was beloved by all of us who were fortunate enough to have his friendship.

MRS. OVERMAN'S APPRECIATION OF SENATE'S TRIBUTE TO THE LATE  
SENATOR OVERMAN

The VICE PRESIDENT laid before the Senate the following telegram from Mrs. Lee S. Overman, of Salisbury, N. C., which was ordered to lie on the table:

[Telegram]

SALISBURY, N. C., January 8, 1931.

HON. CHARLES CURTIS,

President of United States Senate, Washington, D. C.:

We wish to thank you and, through you, the Members of the Senate for the resolutions adopted on occasion of the death of my husband, the late Senator OVERMAN, for the impressive funeral services held in the Senate Chamber, and for the beautiful tribute of flowers which were buried with him. We deeply appreciate these marks of love and respect on the part of the Senate. They afford us a measure of consolation that nothing else could give.

MRS. LEE S. OVERMAN.

#### VISITORS TO THE NAVAL ACADEMY

The VICE PRESIDENT appointed, pursuant to law, the Senator from New Jersey [Mr. KEAN], the Senator from Pennsylvania [Mr. DAVIS], the Senator from Florida [Mr. TRAMMELL], and the Senator from Massachusetts [Mr. WALSH] members of the Board of Visitors on the part of the Senate to visit the Naval Academy at Annapolis, Md.

#### SUPPLEMENTAL ESTIMATE—CONTINGENT EXPENSES, SENATE (S. DOC. NO. 251)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmit-

ting a supplemental estimate of appropriation pertaining to the legislative establishment, fiscal year 1931, for contingent expenses of the Senate, in the sum of \$40,000, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

#### DISPOSITION OF USELESS PAPERS

The VICE PRESIDENT laid before the Senate a communication from the Public Printer, transmitting, pursuant to law, a list of papers on the files of the Government Printing Office which are not needed in the conduct of business and have no permanent value or historical interest, and asking for action looking to their disposition, which was referred to a Joint Select Committee on the Disposition of Useless Papers.

The VICE PRESIDENT appointed Mr. SHIPSTEAD and Mr. FLETCHER members of the committee on the part of the Senate.

He also laid before the Senate a communication from the secretary of the United States Civil Service Commission, transmitting, pursuant to law, a schedule of useless papers on the files of the United States Civil Service Commission in Washington, D. C., which are not needed in the conduct of business and do not appear to have any historical value, and asking for action looking to their disposition, which was referred to a Joint Select Committee on the Disposition of Useless Papers in the Executive Departments.

The VICE PRESIDENT appointed Mr. DALE and Mr. McKELLAR members of the committee on the part of the Senate.

#### PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a resolution adopted by the Industrial Club, of St. Louis, Mo., favoring the immediate passage of legislation to so amend the Volstead Act as to permit the legitimate manufacture and sale of nonintoxicating beer, and to place upon this beverage its just share of taxation, which was referred to the Committee on the Judiciary.

He also laid before the Senate a resolution unanimously adopted at a meeting of the Municipal War Veterans' Memorial Association, of New York, N. Y., favoring the employment as enumerators in the Federal census of at least 35 per cent of veterans, which was referred to the Committee on Commerce.

He also laid before the Senate resolutions adopted by the National Progressive League, of Wayne County, Mich., protesting against the passage of the so-called Hawes-Cutting bill, granting independence to the Philippine Islands, which were ordered to lie on the table.

He also laid before the Senate a resolution adopted by Filipino Veterans of the World War at Manila, P. I., protesting against the passage of immigration legislation to exclude Filipinos from the United States, which was referred to the Committee on Immigration.

He also laid before the Senate resolutions adopted by the Provincial Board of Romblon, P. I., protesting against the alleged inhumanities and atrocities committed against Filipinos on the Pacific coast, and favoring the passage of legislation protecting the Filipinos in the United States, which were referred to the Committee on Territories and Insular Affairs.

Mr. JONES presented a letter in the nature of a petition from members of Port Angeles Aerie, No. 483, Fraternal Order of Eagles, of Port Angeles, Wash., praying for the adoption of the so-called Eagle plan of unemployment relief and the establishment of a Federal industrial commission, which was referred to the Committee on Education and Labor.

Mr. HALE presented petitions of sundry citizens of Norway, Lewiston, Livermore, and Auburn, all in the State of Maine, praying for the passage of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. COPELAND presented petitions numerous signed by sundry citizens of Brooklyn, N. Y., praying for the passage



of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. TYDINGS presented petitions of sundry citizens of Baltimore and vicinity, in the State of Maryland, praying for the passage of legislation for the exemption of dogs from vivisection in the District of Columbia, which were referred to the Committee on the District of Columbia.

He also presented petitions of sundry members of the faculties of Johns Hopkins University, Goucher College, and other educational institutions, of clergymen, lawyers, bankers, business executives, and other citizens, all of Baltimore and vicinity, in the State of Maryland, praying for the ratification of the World Court protocols, including the so-called Root formula, which were referred to the Committee on Foreign Relations.

#### ENROLLED BILLS PRESENTED

Mr. GILLETT, from the Committee on Enrolled Bills, reported that on to-day, January 12, 1931, that committee presented to the President of the United States the following enrolled bills:

S. 4803. An act to extend the time for constructing a bridge across the Atchafalaya River at or near Morgan City, La.;

S. 4804. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Atchafalaya River at or near Krotz Springs, La.;

S. 4805. An act to extend the time for construction of a free highway bridge across the Red River at or near Moncla, La.;

S. 4806. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Red River at or near Alexandria, La.;

S. 4807. An act to extend the time for construction of a free highway bridge across the Red River at or near Coushatta, La.;

S. 4808. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Red River at or near Shreveport, La.;

S. 4809. An act granting the consent of Congress to the Louisiana Highway Commission to construct, maintain, and operate a free highway bridge across the Ouachita River at or near Sterlington, La.;

S. 4810. An act to extend the time for construction of a free highway bridge across the Ouachita River at or near Monroe, La.;

S. 4811. An act to extend the time for construction of a free highway bridge across the Ouachita River at or near Harrisonburg, La.; and

S. 4812. An act to extend the time for construction of a free highway bridge across the Black River at or near Jonesville, La.

#### BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GOFF:

A bill (S. 5665) to designate United States Highway No. 50 as the George Washington Highway, and for other purposes; to the Committee on Post Offices and Post Roads.

By Mr. NORBECK:

A bill (S. 5666) granting a pension to Shoots Enemy or Yellow Hair (with accompanying papers);

A bill (S. 5667) granting an increase of pension to Alfred C. Plaude (with accompanying papers); and

A bill (S. 5668) granting an increase of pension to Joseph T. Stapleton (with accompanying papers); to the Committee on Pensions.

A bill (S. 5669) for the relief of William A. Delaney (with accompanying papers); to the Committee on Claims.

By Mr. KEAN:

A joint resolution (S. J. Res. 232) authorizing the issuance and sale of two billion 2-cent stamps in connection with drought relief; to the Committee on Post Offices and Post Roads.

#### PETITIONS FOR CITIZENSHIP

Mr. HALE submitted an amendment intended to be proposed by him to the bill (H. R. 10672) to amend the naturalization laws in respect of posting of notices of petitions for citizenship, which was referred to the Committee on Immigration and ordered to be printed.

#### PAYMENT OF DEATH GRATUITY

Mr. McMASTER submitted an amendment in the nature of a substitute intended to be proposed by him to the bill (H. R. 7639) to amend an act entitled "An act to authorize payment of six months' death gratuity to dependent relative of officers, enlisted men, or nurses whose death results from wounds or disease not resulting from their own misconduct," approved May 22, 1928, which was ordered to lie on the table and to be printed.

#### AMENDMENT TO AGRICULTURAL DEPARTMENT APPROPRIATION BILL

Mr. TYDINGS submitted an amendment to increase the appropriation for the purchase of additional land for experimental purposes adjoining the experimental farm of the Department of Agriculture near Beltsville, Md., from \$15,975 to \$16,950, intended to be proposed by him to House bill 15256, the Agricultural Department appropriation bill, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

#### APPOINTMENTS BY EXECUTIVE ORDER AND DISMISSALS IN THE CIVIL SERVICE

Mr. HEFLIN. I wish to submit a Senate resolution and ask that it go over under the rule.

The resolution (S. Res. 398) was read and ordered to lie over under the rule, as follows:

*Resolved*, That by January 26, 1931, the Secretary of the Treasury shall furnish the Senate with a duplicate list of appointments made by Executive order on August 22, 1925, without examination, indicating residence, salaries, and duties; be it further

*Resolved*, That the Secretary of the Treasury shall also furnish the Senate a list of permanent civil-service employees from States whose quotas are in arrears who were discharged in 1926 in accordance with Executive order of June 4, 1925, for reduction of force; and also the number of said employees who were reemployed at reduced salaries, indicating the reduction in salary; be it further

*Resolved*, That the Secretary of the Treasury advise the amount saved by said reduction of force and also advise the amount of increases in salaries for those retained.

#### EXECUTIVE MESSAGES

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

#### CLAIMS AND EXPENSES UNDER THE STATE DEPARTMENT (S. DOC. NO. 252)

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

*To the Congress of the United States:*

I transmit herewith a report by the Secretary of State recommending the enactment of legislation for the following purposes:

#### I

For the relief of the widow, Raimunda Valladares de Calderon, and children of Justo Calderon, a native Nicaraguan, who was shot to death on January 30, 1930, by Chief Pharmacist's Mate Willie H. Williamson, United States Navy, who was serving as a second lieutenant in the Nicaraguan National Guard.

#### II

For reimbursement of Demetrio Valle, a Nicaraguan citizen, which arose from bombing operations of a United States Marine Corps airplane near Palsagua, Nicaragua, on or about April 11, 1929.

#### III

For reimbursement of Salvador Buitrago Diaz, owner of the newspaper La Tribuna, of Managua, Nicaragua, for damage done to his property by United States marines on February 6, 1921.



## IV

For reimbursement of Dr. Enrique Klinghoffer and Dr. Br. Rap-poccioli for payment for professional services rendered and medical supplies furnished to Charles Stevens McReynolds, deceased, former major United States Marine Corps.

## V

For payment of a claim against the Navy Department in the sum of \$1,500 United States currency transmitted to that department by the commander in chief United States Asiatic Fleet, after a consultation with the American consul general at Shanghai, regarding proper compensation in the circumstances, in behalf of Ling Mau Mau, a citizen of China, for personal injuries received by him as a result of a collision between a Chinese junk on which he was aboard and the United States naval vessel *Whipple*, which occurred in the Whangpoo River on May 20, 1930.

## VI

For payment of a claim of Miss Janet Hardcastle Ross, a Canadian citizen, for compensation for personal injuries resulting from the dropping of a dummy bomb by a United States Navy airplane near Coronado, Calif., on March 27, 1929.

## VII

For payment of claims presented by the Governments of Great Britain and of Japan for reimbursement by the Government of the United States of its share in the expenses incurred by the Governments of Great Britain and of Japan in connection with the proposed deportation of enemy aliens from China to Australia during the World War.

## VIII

To provide \$15,000 for the expenses of the Fourth Pan American Commercial Conference to be held in Washington in 1931.

## IX

Report and recommendation concerning a claim against the Navy Department in the sum of \$15.59, United States currency, in behalf of N. J. Moosa, a citizen of Great Britain, for reimbursement of expenses of medical services and hospital treatment incurred by him as the result of a collision at Shanghai, China, on September 13, 1928, between a United States Marine Corps truck and a broker's trap, in which he was riding.

## X

To provide \$50,000 for the expenses of participation by the United States in the World's Grain Exhibition and Conference to be held in Canada in 1932.

The recommendations of the Secretary of State have my approval and I request the enactment of legislation for the purposes stated in order that this Government may carry out the projects and meet the obligations outlined in the report.

HERBERT HOOVER.

THE WHITE HOUSE, January 12, 1931.

HENRY P. FLETCHER

The Senate being in executive session,

The VICE PRESIDENT. The clerk will report the first name on the calendar.

The Chief Clerk announced the name of Henry P. Fletcher, of Pennsylvania, to be a member of the United States Tariff Commission.

## FEDERAL POWER COMMISSION

Mr. DILL. Mr. President, I do not want to inject into the discussion of nominations for the Tariff Commission anything involving the Power Commission question, but I would like to have inserted in the RECORD an editorial from to-day's Washington Daily News entitled "The Issue." I should like to have it made a part of my remarks at this point in the RECORD.

The VICE PRESIDENT. Without objection, it is so ordered.

The editorial is as follows:

[From the Washington Daily News, Monday, January 12, 1931]

## THE ISSUE

President Hoover's denial that he is a defender of the power interests could be accepted more readily if it had not been made a few minutes before his Secretary of the Interior restored Frank E. Bonner to the Government pay roll.

This sounds like a minor item compared with the major conflict now under way between the Senate and the President over the three Federal Power Commissioners. Hoover, no doubt, would like it to be ignored in the excitement of his wrathful attack upon the Senate. But it goes through all the smoke and thunder to the very heart of the matter.

There has never been the slightest doubt about Frank E. Bonner; Bonner, whose appointment as executive secretary to the outgoing Power Commission was made on recommendation of a power company official; Bonner, who recommended that the commission drop regulation of power company securities; Bonner, who tried to break up the commission's accounting work; Bonner, who tried,

unsuccessfully, to suppress opinions of Solicitor Russell squeezing the water out of power company accounts, and then tried to have the position of solicitor abolished; Bonner, who, failing again, sent an investigator to Montana to try to smear Solicitor Russell's reputation; Bonner, who told the Senate the power companies "are being persecuted"; Bonner, who, as he saw his tenure of office drawing to an end, tried to get the commission to issue a "minor part" license to the Appalachian Electric Power Co., freeing that company and possibly three-fourths of all companies from all regulation by the Power Commission.

Bonner was dismissed by the new power commissioners. But so were King and Russell, the men who had tried to enforce the Federal water power act over Bonner's opposition.

And now Bonner is welcomed back with open arms into the Government service. King and Russell are left to find jobs where they may.

Hoover speaks the truth when he says the people will pass upon all this with unerring judgment. His phrases about the duty of the Executive to resist encroachments of the Senate upon his prerogatives will not blind an electorate which showed last November its understanding of the underlying conflict.

From the beginning there has never been a real issue in this quarrel except enforcement of the Federal water power act.

That was the issue when King and Russell refused to acquiesce in Bonner's attempts to nullify the act.

It was the issue when the President picked for his new Federal Power Commission four men who knew nothing whatever about the intricate power law or the difficulties of enforcing it, and, for chairman, a man who had shown himself a thoroughly tractable bureaucrat.

It was the issue when the Senate reluctantly confirmed these men, falling to find in their undistinguished pasts an affirmative reason for not doing so.

It was the issue when Smith, Garsaud, and Draper rushed to take the oath of office and to dismiss from the commission King and Russell, who had resisted the power companies.

It was the issue when the Senate, acting in the only way an honest legislative body could act, reconsidered its confirmation of these men.

It was the issue when Hoover elected to defend his three commissioners and defy the Senate in its right to refuse to approve them.

It was the issue when these self-discredited new "commissioners" secretly began reconsideration of the iniquitous "minor part license" case while the Senate was voting them fit for office.

It was the issue when Hoover's Secretary Wilbur found a job for the repudiated Bonner.

And it will be the issue when the voters eventually "pass unerring judgment" on this power fight.

Mr. DILL. I also ask to have inserted in the RECORD at this point and made a part of my remarks an editorial from the New York American entitled "The President v. the Public," and an editorial from this morning's New York World entitled "The Power Board Dispute." I make the request because these articles discuss quite frankly and, as I think, clearly and correctly the existing situation.

The VICE PRESIDENT. Without objection, it is so ordered.

The editorials are as follows:

[From the New York American, Monday, January 12, 1931]

## THE PRESIDENT v. THE PUBLIC

Whether the people or the Power Trust shall control the new Federal Power Commission is the real and fundamental issue now joined between the Senate and the President.

This is too grave an issue for the people to be blinded by technicalities of procedure.

In the light of the facts no power can prevent the people from seeing the issue clearly.

Once they are in possession of the facts, not even the power of the Presidency can dissuade the people from following where the facts lead.

Here are the facts:

By a vote of 44 to 37 the Senate requested the President to return for reconsideration the nominations of the chairman and two other members of the new Power Commission.

This request was prompted by the action of three commissioners in summarily removing the chief auditor and the solicitor of the old commission who have done their best to prevent the Power Trust from stealing valuable properties belonging to the public.

In making this request the Senate contends that it acted in accord with Senate rule No. 38. Under this rule no nomination is finally confirmed or rejected until two days after the Senate has voted upon it.

This rule also provides that "if a notification of the confirmation or rejection shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such nomination to the Senate."

The nomination of these three commissioners having been returned to the President before the time limit fixed by this rule



had expired, the Senate was within its rights in requesting the return of the nominations.

But the President not only refuses to accede to the request of the Senate but challenges the right of the Senate to reconsider the nominations and sustains the action of the commissioners in removing these two faithful employees.

"By their fruits ye shall know them." The representatives of the people in the Senate are trying to prevent the Power Trust from controlling the Federal Power Commission.

The representatives of the people in the Senate are trying to prevent the tools of the Power Trust on the commission from punishing Chief Auditor King and Solicitor Russell for doing their best to prevent the Power Trust from stealing the properties that belong to the people.

But the representative of the people in the Presidency lines up against the Senate and the faithful public servants the Senate is trying to protect for doing their duty and goes to the support of the Power Trust and the three members of the new Power Commission that did exactly what the Power Trust wanted them to do when they dismissed King and Russell.

The Hearst newspapers, in calling upon the Senate to reconsider the nominations of Chairman Smith and Commissioners Garsaud and Draper, said:

"As for Mr. Hoover himself, he is apparently acting not as the President of the United States but as the president of the Power Trust."

By action that speaks louder than words, Mr. Hoover now shows that the Hearst newspapers were right in their conclusion.

Thus in the eternal struggle between justice and privilege, of which the conflict between the Senate and the President is the latest engagement, you see the Senate championing the cause of the public and the President joining forces with the Power Trust.

So that if Mr. Hoover is not president of the Power Trust now, he probably will be after 1932.

[From the New York World, Monday, January 12, 1931]

#### THE POWER BOARD DISPUTE

The dispute between the President and the Senate over the recent appointments to the Federal Power Commission is a new form of an old controversy. It is new in that the Senate's vote for a reconsideration of its confirmation of the appointment of three members of the commission is wholly without precedent. But the Senate's insistence upon a right to some degree of control over the tenure of those officeholders whose appointment it confirms is by no means novel. This, indeed, formed the main basis of the dispute which led to the impeachment of President Johnson in 1868. In these earlier controversies the Senate sought to exercise the same sort of control over the removal of an officeholder which it exercised over his appointment. During its quarrel with President Johnson Congress passed over his veto the tenure of office act requiring the President to obtain the consent of the Senate to the dismissal of any official whose appointment it had confirmed. This act was later modified and finally repealed.

In the case of the Power Commission the Senate has sought to use its authority not to prevent a removal but virtually to make one on its own initiative. It is this which gives the case its novelty. Under its existing rules the Senate may reconsider the nominations it has confirmed "on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate." The rules also provide that "if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion for reconsideration may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate."

In voting for a reconsideration of its confirmation of three members of the Power Commission the Senate has thus acted in strict compliance with its own rules. It confirmed the appointments on December 19 and 20 and then adjourned for the holidays. The President, meantime, was officially notified of the Senate's action and issued commissions to the appointees. On December 23 the three members of the newly appointed commission, who were then in Washington, without awaiting the arrival of their colleagues, notified all employees of the old commission that the new law automatically ended their tenure, but they also arranged to retain the services of the clerical staff for the time being. The main result was to bring about the dismissal of the secretary, the solicitor, and the chief accountant. The solicitor, Charles F. Russell, and the chief accountant, William V. King, have been unpopular with the power companies because of their advocacy of more effective methods of regulation, and it was their removal which led the Senate to vote for a reconsideration of its confirmation of the appointments of Commissioners Draper, Garsaud, and Smith.

Since a motion to this effect was made on the first legislative day following the confirmation, the Senate's action seems to have been clearly in order under its rules. On the other hand, since the commissioners have been duly sworn in and the Attorney General has ruled that the appointments have been constitutionally made, it seems that the President is on solid legal ground when he declines to accede to the Senate's request, for his compliance would be tantamount to acknowledging that the Senate had the power under certain conditions to remove duly appointed officers. When the Senate's rules conflict with the law and the Constitution the President's duty is plain.

The President's power over appointments and removals was emphasized, even while the tenure of office act was in force, by Presidents Grant, Hayes, and Cleveland. All three of these urged the repeal of that measure. President Cleveland challenged its constitutionality and acted in defiance of it, declaring that it was his duty to maintain the Chief Magistracy "unimpaired in all its dignity and vigor," and Congress repealed the act during his first term. Ten years later the President's sole authority over removals from office was sustained by the Supreme Court in the leading case of *Parsons v. United States*.

The constitutionality of President Hoover's position has no bearing, of course, upon the propriety of the summary dismissal by the three power commissioners of two public officials who had shown a commendable zeal in protecting the interests of the public. The President's message to the Senate does not touch upon this issue. He would have done well to rest his case before the country with that document. Unfortunately he has supplemented it with a public manifesto which is both inept and indefensible. He depicts the criticism of the Power Commission as a bit of political strategy and intimates that it is actuated by "a hope of symbolizing me as the defender of the power interests if I refuse to sacrifice three outstanding public servants." \* \* \*

This is the second time within a month that the President has impugned the motives of the Senate. A few weeks ago those who disagreed with his program for the relief of unemployment were denounced as playing politics at the expense of human misery, and now those who question the conduct of his appointees are denounced in equally vehement fashion. Cooperation with the Senate is indispensable to the success of Mr. Hoover's administration, but how can he expect to obtain it with such outbursts of ill temper?

Mr. HASTINGS. Mr. President, may I have inserted in the RECORD, immediately following the articles requested to be printed therein by the Senator from Washington [Mr. DILL], an editorial from the Washington Post of January 11, 1931, on the same subject? I would like to say that I have deleted from that editorial words in two places which might be objectionable.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

The editorial is as follows:

[From the Washington Post, Sunday, January 11, 1931]

#### THE SENATE MASTERED

Nothing that Mr. Hoover has done in the Presidency has met with such an electric and delighted response from the public as his rebuff to the Senate, administered yesterday.

It is now seen that the people were not mistaken in Herbert Hoover. When they elected him they regarded him as a man of courage and fidelity, who would discharge the duties of the Presidency without fear or favor, patiently but with a will of iron. He has now met the test and emerges his own master and master of the Presidency.

"I can not admit the power in the Senate to encroach upon the Executive functions."

These words became American history the moment they were uttered. It is the voice of George Washington and Abraham Lincoln that speaks through Herbert Hoover.

There is another historic saying: "Whom the gods would destroy they first make mad." The clique of Senators who invited this staggering rebuke from the President of the United States do not quit. They have the vanity of small men who vainly hope to ward off public derision and contempt by persisting in further frantic excesses. Accordingly they vote to place the names of the power commissioners back on the calendar, notwithstanding the President's refusal, as if the Senate could remove these officials from office. Notice is also given that an attempt will be made to withhold the pay of these officials.

The full effect of this plunge into insanity will fall upon the Democratic Party. Democrats engineered this attempt to usurp Executive power. Democrats bulldozed Senator ROBINSON, their floor leader, into supporting them, and he will now have abundant leisure in which to repent. He had a wonderful opportunity to stay his party colleagues before they made a fatal blunder, which in politics as in war is worse than a crime. He wavered, and so he shares his party's humiliation.

The majority that committed the Senate to this disastrous collision with the Executive makes itself ridiculous by restoring the names of the power commissioners to the calendar of nominations. If the Senate had power to do that, why did it waste five days in debating the question of asking the President to return the nominations? The Democrats who conceived this brilliant futility seem to be determined to reap the full harvest of public derision.

It was not through lack of information that the Democratic-insurgent coalition committed the blunder of trying to intimidate President Hoover. Senator GORR was particularly cogent in his summing up of the constitutional question involved. What he said was unanswerable, and what followed confirmed his statements. "The action of the Senate in voting to recall these names, for the purpose of removing these commissioners, was the exercise solely of an Executive function," says Senator GORR. "Under the Constitution the President has no authority whatsoever to return



the names of the commissioners to the Senate, which is a legislative body possessing no authority to remove or impeach."

President Hoover's public statement on this matter reinforces his message to the Senate and gives the people a clear idea of the nature of the controversy. But it does more than that. It gives the people a clear idea of the mettle of the man at the head of the Government. Here is the successor of Washington, Lincoln, and Cleveland. No President has more resolutely fulfilled his oath to support and defend the Constitution.

No President has more clearly earned the thanks and support of the American people than President Hoover has earned it by putting the Senate in its place.

**Mr. HASTINGS.** Also I ask to have inserted in the RECORD an editorial appearing in the Washington Star of January 11, 1931, and an article appearing in to-day's New York Herald Tribune quoting several editorials, one of which I have stricken out from the Detroit Free Press, because it seems to me it might be objectionable.

**The VICE PRESIDENT.** Without objection, it is so ordered.

The editorials are as follows:

[From the Washington Star, Sunday, January 11, 1931]

#### THE POWER COMMISSIONERS

The Senate, by a vote of 44 to 37, has sought to remove from office three members of the Federal Power Commission after they have been duly "appointed" and commissioned by the President. None of the Senators who voted last night to request the President to return to the Senate the nominations of these three commissioners would hold that the President had in any way violated precedent or the law, after he had been officially notified that the Senate "advised and consented" to the appointment of the commissioners. They have insisted, however, that the Senate has the right to call back the nominations of the commissioners because the motion to reconsider and recall was made within the first two "executive" sessions of the Senate after confirmation.

It is now contended that the Senate, as the journal of its executive session shows, waived the rule when on December 20 it sent to the President notice of the confirmation of the nominations. Senators who demanded the recall of the nominations, by their objection last night to sending to the President notice of the confirmation of other nominations, acted upon yesterday by the Senate, gave emphasis to the argument that in acting on the power commissioners' nominations originally they had waived their rule and given the President authority to go ahead and "appoint" and commission the power commissioners.

The President, having acted within his rights, is now asked by the Senate to rescind that action and return to the Senate the nominations of the power commissioners. If the President accedes to the request he establishes a precedent which may rise to plague the Executive in the future in its dealings with the Senate, which is constantly seeking to encroach upon the authority of the Executive, as has been shown over a long period of years. It is not the part of the Senate to retire from office officials of the Government after it has "advised and consented" to their appointment, and these officials have been appointed and commissioned by the President in accordance with the law. That is a function allocated to the Chief Executive. Impeachment proceeding for malfeasance in office may be instituted in the House, and if determined upon by that body may be tried by the Senate.

Politics lies at the bottom of the present controversy between the Senate and the Chief Executive. Also, a desire on the part of opponents of Mr. Hoover to make the so-called water-power issue paramount in the campaign of 1932 and to align Mr. Hoover with the so-called Power Trust and against the interests of the general public. The opponents of the administration seized upon the fact that the three power commissioners—to whose appointment a majority of them had "advised and consented"—had let out of office two officials of the old Power Commission who were declared to be antagonistic to the power interests. It is true that at the same time the commissioners had declared vacant the office of the executive secretary, held by F. E. Bonner, characterized by many of the Senators as a friend of the power interests.

Never before, so far as the records have revealed, has the Senate undertaken to remove from office by the reconsideration route officials to whose appointment it has advised and consented, after appointment has been made by the President in due form. If the President declines to send the names of the commissioners back to the Senate, holding that he can not waive the powers of the Executive relating to dismissal, there appears to be nothing the Senate can do about the matter, although it might by some device be carried to the courts for final determination. It has been suggested that the Senate in its wrath may withhold appropriations for the members of the Power Commission. But in such action it must have the concurrence of the House. It is doubtful if the House would undertake to uphold the Senate in its course with regard to the power commissioners.

The Senate's action last night appears to be notice to any and all who are appointed to serve on the Federal Power Commission that they must retain in service subordinate officials whom the "coalition" desires to have retained. If that is to be the dictum, the only course for the President to follow would be to appoint Messrs. King and Russell, the two officials in question, as members of the Power Commission.

[From the New York Herald Tribune, Monday, January 12, 1931]

**SENATE LACKS RIGHT TO RECALL, PRESS BELIEVES—PHILADELPHIA PUBLIC LEDGER FINDS LIMIT REACHED IN "ARROGANT ASSUMPTION"—POWER LOBBY IS ASSAILED—PRESIDENT HAS UPPER HAND, ASSERTS BALTIMORE SUN**

Leading newspapers in various parts of the country published the subjoined editorial comment upon the controversy between the President and the Senate with regard to three members of the Federal Power Commission:

#### East

##### NEW YORK TIMES

"As for the President, he acted promptly, courageously, and in the highest tradition of his great office. His statement of the law was absolutely crushing to his opponents, while his explanation of the policy of the administration in the matter of regulating hydroelectric companies was clear and convincing. There was a ring of honest indignation in his words when he deplored the raising of such a foolish and time-wasting controversy in the Senate at a juncture when 'the condition of the country requires every constructive energy.' To that implied rebuke of the Senate we are confident that the country will say a loud amen. When the Senate of the United States turns its 'advice and consent' into device and contempt, the people of the United States will know what to think of it."

##### PHILADELPHIA PUBLIC LEDGER

"The long story of the United States Senate's attempt to assert authority over the executive branch of the Government contains many examples of arrogant assumption, but the limit would seem to have been reached. \* \* \* No one expected Mr. Hoover to yield to the Senate's contention. To do so would have encouraged the Senate to adopt a similar dictatorial attitude toward the policies and procedure of the Interstate Commerce Commission, the Tariff Commission, the Farm Board, and all other governmental bodies whose membership it confirms. His refusal will be widely commended. From the practical viewpoint, the Senate has indulged in an idle gesture. But as a symptom of its increasing spirit of autocracy and disposition to dictate to the Executive it is most disquieting."

##### BALTIMORE SUN

"There is not much doubt that the President has the Senate by the short hair in this matter of the attempted recall of the confirmation of three members of the Power Commission. \* \* \* The whole affair gives no credit either to the Senate or to the President, and offers no cheering prospect to the people. \* \* \* So far as we can see, nobody deserves any congratulations. The Senate has rather made a spectacle of itself, and Mr. Hoover has won another of the kind of victories that scare sensible men to death."

##### WASHINGTON POST

"Nothing that Mr. Hoover has done in the Presidency has met with such an electric and delighted response from the public as his rebuff to the Senate administered yesterday. It is now seen that the people were not mistaken in Herbert Hoover. He has met the test and emerges his own master and master of the Presidency. 'I can not admit power in the Senate to encroach upon the Executive.' These words became American history the moment they were uttered. The full effect of the Senate's plunge into insanity will fall upon the Democratic Party. Democrats engineered this attempt to usurp Executive power. They made a fatal blunder, which in politics, as in war, is worse than a crime. \* \* \*

"With an obscure rule of procedure as a pretext, the Senate had attempted again to encroach on Executive rights, and he has publicly rebuked it in an appeal to the country."

"When he imputes malicious motives to the Senate majority he voices the belief of the great mass of the people, and their 'unerring judgment' will sustain him. Once again the Senate has indulged in tactics which will further impair its standing. It is refreshing to read the President's accusations. They recall the words of President Coolidge on a similar occasion: 'It is time that we return to a government under and in accordance with the usual forms of the law of the land. The state of the Union requires it. The state of the Union never required it more urgently than at present.'"

##### PHILADELPHIA INQUIRER

"The President sees the real issue clearly, though the Senate is trying to camouflage it. It reaches far beyond the matter of the appointments in question or even the functions of the Power Commission. The Senate resolution, as the President says, encroaches upon the executive arm of the Government. Mr. Hoover accepts the full duties and responsibilities of his office, resisting unconstitutional dictation. No self-respecting President could do less. And public opinion will be firmly behind him, as it was behind his predecessors, in refusing to yield one jot or tittle of his authority to his self-appointed censors. No little oligarchy of Senators can take it away from him."

#### Middle West

##### CLEVELAND PLAIN DEALER

"The Senate is probably skating on thin legal ice. Its action can hardly be conceived as more than a gesture of protest. Virtually it asserts a power of senatorial recall. If power commissioners' confirmation can be called back because the Senate does not like what they do after they take office, what would prevent



the Senate from seeking by the same method to oust the Chief Justice or any other presidential appointee subject to Senate confirmation? But if the Senate's action is open to criticism on legal grounds, its timeliness as a gesture of protest will lead many to defend the Senators who changed their vote. It is a blow at the power lobby, which for years has been seeking a direct legislative and administrative action and to influence public opinion."

#### INDIANAPOLIS STAR

"The rebuke administered to the Senate by President Hoover should be understood and its importance recognized in every corner of the Nation. The Chief Executive was not merely fighting back at a group of bumptious Senators disgruntled because of the action of the recently installed power commissioners. He was defending a fundamental principle in our plan of government. The President was standing firmly in support of the executive and judicial departments, which were threatened by the Senate. Nothing the Senate has done demonstrated so forcibly, as has its recall resolution, the depths to which that body has fallen. A majority apparently has lost, or never had, a proper conception of the Senate's function in our theory of government."

#### DES MOINES REGISTER

"President Hoover makes a perfect defense of his refusal to return the names of the power commissioners to the Senate for reconsideration of their nominations. The commissioners no doubt acted with undue haste in discharging the working force of the old commission. That haste caused the Senate to act precipitately in adopting the resolution to reconsider. But the President has settled the whole controversy. He has acted promptly and with decision. If he were to act thus vigorously oftener, he would find the country responding more readily to his leadership."

#### West

#### PORTLAND OREGONIAN

"If presidential appointments that are legally made, confirmed, and put into effect could be upset by the Senate at one time, why not at another? Why would not the Senate have this club of reconsideration to hold over all presidential appointees a month after confirmation, or six months, or a year? The Senate blundered by sending the names along while there remained a possibility that it would change its mind. Now it asks the President to do something he can not legally do for the sake of righting its own mistake. Yet if the commissioners had not actually gone into office, the movement to oust them would not have started."

#### SAN FRANCISCO CHRONICLE

"The Senate's action is pure partisan peevishness, just another exhibition of insurgent ghost dancing, abetted by the Democrats with the hope of annoying the administration. The line-up tells its own story. The action of the Senate has the unpleasant odor of an attempt at usurpation. Yet it need not be taken too seriously even in that light. The coalition itself probably didn't expect President Hoover to let the Senate commit an act of usurpation. While throwing bricks at the President the Senate hoped he would save it from its own folly. In the meantime the insurgents and their Democratic sympathizers have had a lovely time making swashbuckling speeches for home consumption and using up five days needed for urgent public business."

#### South

#### BIRMINGHAM NEWS-AGE-HERALD

"The President's statement on the matter gives the Senate as well-deserved a dressing down as that body has ever had at the hands of any Chief Executive. At the same time it is written in temperate terms and with scrupulous regard for all the facts of the situation. This restraint on the part of Mr. Hoover gives added force to his statement. \* \* \* The Senate has been entirely in the wrong in this affair. Its actions have not only been spiteful but petty and childish. It has attempted to dictate to the Power Commission concerning a more or less trivial affair with which it had nothing to do in the first place. It has attempted to encroach upon the authority of the President. It has acted with indiscretion and poor judgment. It has acted unfairly. It was in no respect whatever in the right in its attitude."

#### ATLANTA CONSTITUTION

"The action of the Senate is not only unprecedented but it must be alarming to every devotee to orderly and just government. The technicality based on Senate parliamentary rules weighs absolutely nothing in the grosser implications of the Senate action. The grave questions involved are the prerogatives of the chief of the executive department and the legal rights of the officers of the Government constitutionally designated and confirmed to their places and functions."

#### MEMPHIS COMMERCIAL-APPEAL

"Regardless of the qualifications of the new Power Commission as developed by newly discovered evidence, President Hoover is not only within his rights in refusing to return the nominations to the Senate but for once shows the proper spirit in asserting himself as the executive department of the Government. The Government must be run along well-ordered lines and their process must have due regard to the developments of functions set by the Constitution. The Senate must advise and consent, but the Constitution requires this to be done only once. When that is done, as was done in the Power Commission case, that will be the end of it."

#### RALEIGH NEWS AND OBSERVER

"Senator WALSH and other Senators have done a great public service in bringing the action of the Power Commission under pub-

lic condemnation. The President should have returned the nominations and the Senate should have recalled the other two. If the President is legally right, a good purpose has still been subserved in putting the commissioners under the calcium light. That the commission should have been comprised of the ablest men in America, whose very names would have inspired confidence."

#### NEW ORLEANS TIMES-PICAYUNE

"The controversy over the Power Commission involves a question of fundamental law which will have to be settled by the courts if all the parties thereto maintain their present position with respect to it. During the interval indignant Senators can debate the issue as much and as long as they like. The probability that they will do this very thing suggests the probability of further delay of relief legislation and increases the probability of a forced special session. Conceivably the importance of this new conflict may be greater than outsiders suppose, but many long-range observers now regard it offhand as another illustration of the beautiful 'harmony and cooperation' prevailing at Washington during a trying time when these qualities are so obviously needed."

Mr. HASTINGS. I also ask to have printed in this connection as a part of my remarks an editorial appearing in this morning's New York Times entitled "Worse than Futile," and the statement issued by President Hoover in relation to the Power Commission.

The VICE PRESIDENT. Without objection, it is so ordered.

The editorial and statement are as follows:

[From the New York Times, Monday, January 12, 1931]

#### WORSE THAN "FUTILE"

Senator WALSH of Montana admitted on Saturday that it would be "futile" for the Senate to continue its controversy with the President over the Federal Power Commission. It is a pity that he did not discover this earlier. It was on his motion that the Senate used up nearly a week in discussing a question that never should have been raised at all. Mr. WALSH now admits that the President has the upper hand. Since Mr. Hoover would not knuckle under to the Senate, there is nothing more that the Senate can do except to make damnable faces. The three commissioners whom the Senate wished to remove, by reconsidering their nomination, were duly appointed, confirmed by the Senate, sworn in, and are now lawfully in office. There are only two ways in which they can be got out of it. One is for the President to remove them, which he will not do. The other is for the House to impeach them, which it will not do. There is no possible way of getting the dispute into court. In fact, from the judicial aspect, the dispute has already been foreclosed against the Senate by the Supreme Court. Senator WALSH is quite right in declaring that any further proceedings by the Senate in the premises would be an utter "futility."

Worse than a futility was the whole attitude and action of the Senate from the beginning. What it was endeavoring to do was to usurp for itself an essential part of the power of the Executive. It was setting up one of its own rules as superior to the Constitution of the United States. It should have known in advance that the President would surely resist its attempted encroachment. When he takes the oath faithfully to "execute the office of President," and to "preserve, protect, and defend the Constitution of the United States," he binds himself to maintain, not only for himself but for his successors, every vestige of his rightful power. Upon many Presidents before Mr. Hoover the Senate has made this same kind of attack; but almost invariably it has been repulsed and defeated. And in every case the people have rejoiced at the discrediting and discomfiture of a Senate that sought to rob the President of a part of his prerogative. All this should have been as clear last Monday as it became on Saturday. For almost a week the Senate simply got down into the dirt for nothing.

The alleged legal point which it tried to make was only a covering for a political motive. The desire was to embarrass and entrap the President. Eagerly scenting the possibility that "the Power Trust" may be a winning issue in the presidential election of 1932, the Senate set about to identify Mr. Hoover as a "friend" of the wicked thing. But its poisoned arrows fell harmless from his shield. All that he had to do was to point to the facts and the law. He has recommended that the largest possible right of regulation of power companies shall be placed in the hands of the Federal Power Commission, so far as concerns all interstate transmission. He has appointed competent and honorable commissioners. The Senate found no fault with them until, as they were expected, and almost instructed to do, by the statute, they set about reorganizing their working force so as to eliminate friction and promote efficiency. Then the Senate thought it saw a chance to come forward as the vigilant and formidable enemy of the Power Trust and devoted friend of the people. That was the real reason why it marched uphill for five days, and then ignominiously down again on the sixth, confessing that its whole scheme had ended in futility.

In this display of how not to do it the Democratic Senators took a disgraceful part. Only five of them voted against the folly and and foredoomed failure of calling upon the President to abnegate his office and to humiliate himself. Of the other Democratic Senators it must plainly be said that, as Tacitus wrote of the degenerate Romans, they fairly rushed into their shameful position ("ruerunt in servitium"). They gleefully thought that they were



laying a trap for a Republican President, but fell plump into it themselves. Thereby they threw away the reputation which some of their leaders have been laboring hard to acquire for steadiness and trustworthiness—especially to persuade the country that they were going to avoid every appearance of another deadly alliance with the insurgent Republicans. If they are going to recover for themselves and their party some of that public confidence which they have sought to obtain, and which in one mad week they did so much to shatter, they will have to repent in dust and ashes and bring forth works meet for repentance during all the rest of the session.

The President acted promptly, courageously, and in the highest tradition of his great office. His statement of the law was absolutely crushing to his opponents, while his explanation of the policy of the administration in the matter of regulating hydro-electric companies was clear and convincing. There was a ring of honest indignation in his words when he deplored the raising of such a foolish and time-wasting controversy in the Senate at a juncture when "the condition of the country requires every constructive energy." To that implied rebuke of the Senate we are confident that the country will say a loud amen. When the Senate of the United States turns its "advice and consent" into device and contempt, the people of the United States will know what to think of it.

[From the New York Herald Tribune, Sunday, January 11, 1931]  
PRESIDENT'S STATEMENT TO NATION ON POWER BOARD

WASHINGTON, January 10.—The text of President Hoover's statement to the Nation on the Senate's recall of Power Commission nominations follows:

"JANUARY 10, 1931.

"I have to-day notified the Senate that I will not accede to their resolution requesting the return to the Senate of the resolutions advising and consenting to the appointment of Messrs. George Otis Smith, Col. Marcel Garsaud, and Mr. Claude L. Draper, members of the Federal Power Commission.

"I am advised by the Attorney General that these appointments were constitutionally made, are not subject to recall, and that the request can not be complied with by me. In any event the objective of the Senate constitutes an attempt to dictate to an administrative agency upon the appointment of subordinates and an attempted invasion of the authority of the Executive. These as President I am bound to resist.

"I can not, however, allow a false issue to be placed before the country. There is no issue for or against power companies.

"It will be recalled that on my recommendation the Federal Power Commission was reorganized from the old basis of three Cabinet members giving a small part of their time to a full commission of five members, in order that adequate protection could be given to public interest in the water resources of the country, and that I further recommended that the commission should be given authority to regulate all interstate power rates. The law establishing the new commission became effective last June, although legislation giving it authority to regulate rates has not yet been enacted.

"The resolutions of the Senate may have the attractive political merit of giving rise to a legend that those who voted for it are 'enemies of the power interests' and, inferentially, those who voted against it are 'friends of power interests,' and it may contain a hope of symbolizing me as the defender of power interests if I refuse to sacrifice three outstanding public servants or to allow the Senate to dictate to an administrative board the appointment of its subordinates, and if I refuse to allow fundamental encroachment by the Senate upon the constitutional independence of the Executive. Upon these things the people will pass unerring judgment.

"Much of the debate indicates plainly that those who favored this resolution are intent upon removing Messrs. Smith, Draper, and Garsaud, not because they are unequalled but to insist upon the Senate's own selection of certain subordinates. Irrespective of the unique fitness of these commissioners for their positions and before they have given a single decision in respect to any power company, they are to be removed unless they are willing to accept employees not of their choosing. It is not only the right but it is also the duty of the commission under the law to appoint its own employees.

"It must assume the responsibility for the conduct of its office. The fitness of its subordinates for the fulfillment of their respective duties must be determined by the commissioners, and no honorable man could accept such responsibilities upon any other terms. If the appointments of these commissioners are withdrawn, it is obvious that their successors must accept the Senate's views of these subordinates.

"The resolution raises the question of the independence of the executive arm of the Government in respect of the appointment and removal of executive officials. Many Presidents have had to meet this particular encroachment upon the executive power in some form. Every one of them has repelled it, and every President has handed on this authority unimpaired. It reaches to the very fundamentals of independence and vigor of the Executive, whose power comes from the people alone and the maintenance of which is vital to the protection of public interest and the integrity of the Constitution.

"The President is responsible to the people to see that honest and capable officials are employed by or appointed to the various administrative agencies of the Government. I do not appoint nor recommend any subordinate of the Power Commission. Under the law the commission appoints these officers untrammelled. If the

Power Commission shall fail to employ honest and capable officials, it is within my power to remove such officials as well as the members of the commission. I have not and shall not hesitate to exert that authority. The House of Representatives have the right to impeach any official, and if the Power Commission shall be derelict in the performance of its duties, the orderly and constitutional manner of procedure by the legislative branch would be by impeachment and not through an attempt by the Senate to remove them under the guise of reconsidering their nominations or any attempt to force administrative agencies to a particular action.

"In July last I nominated to the Senate Colonel Garsaud and Messrs. Draper and Williamson as members of the new commission. Their character and fitness for its duties were inquired into by a committee of the Senate and favorably reported. Owing to the press of business in the last session these nominations were not considered at that time. Their names remained before the country for four months, and in December I renominated them to the Senate, together with Mr. George Otis Smith and Mr. Frank R. McNinch. The qualifications of all five members were again searchingly investigated by the committee, the nominations were favorably reported to the Senate, and they were confirmed on December 19 and 20 after full consideration and debate.

"Mr. George Otis Smith has been in public service as member and head of the Geological Survey for 30 years, through Democratic as well as Republican administrations. He has distinguished himself as an independent, devoted public official, with a larger knowledge of water-power resources of the United States than any other man. He was chosen as chairman of the commission. Colonel Garsaud is an eminent engineer and had a distinguished service as colonel in the Army during the World War. Mr. Draper served for 10 years as chairman of the public utilities commission of his State with the universal approval of the citizens of that State. Not a single member is in the remotest way connected with power interests.

"Upon confirmation, official notice was forwarded to me by the Secretary of the Senate, in accordance with the precedents of many years. I thereupon issued the commissions and the appointees were duly sworn into office. Messrs. Smith, Draper, and Garsaud, the only members who were then in Washington, met and assumed the responsibility of office, and, I understand, notified all employees of the old commission that under the new law their employment was automatically terminated. Arrangements were made with the Civil Service Commission to temporarily continue the clerical employees, and further action was deferred upon the secretary, a solicitor, and an accountant and others until a meeting of the full commission, including Messrs. Williamson and McNinch, which was held early in January. At that time all employees, including the three men whose dismissal has been the subject of controversy, were informed they could apply for reappointment and their qualifications would be examined. I am informed that the solicitor and accountant have applied for reappointment, but no action has been taken by the commission upon their applications. The chairman of the commission, however, expressed disapproval especially of the former secretary and the solicitor because of long-continued bickerings and controversies among employees of the old commission.

"I regret that the Government should be absorbed upon such questions as the action of the Power Commission in employment or nonemployment of two subordinate officials at a time when the condition of the country requires every constructive element.

"HERBERT HOOVER."

#### REPORTS OF COMMITTEES

The Senate being in executive session,

Mr. MOSES. Mr. President, if it is not out of order to transact some executive business, I ask unanimous consent to submit a report for the Executive Calendar.

The VICE PRESIDENT. The report will be received.

Mr. MOSES, from the Committee on Post Offices and Post Roads, reported favorably the nominations of Blanche B. Pineo to be postmaster at Center Ossipee, N. H., and Willard C. Fogg to be postmaster at Lincoln, N. H., which were placed on the Executive Calendar.

Mr. BORAH, from the Committee on the Judiciary, reported favorably the nomination of Daniel H. Case, of Hawaii, to be circuit judge, second circuit, Territory of Hawaii, which was placed on the Executive Calendar.

Mr. HEBERT, from the Committee on the Judiciary, reported favorably the nomination of Joseph J. McGuigan, of Pennsylvania, for appointment as district attorney of the Canal Zone, which was placed on the Executive Calendar.

Mr. BRATTON, from the Committee on the Judiciary, reported favorably the nomination of Philip H. Mecom, of Louisiana, to be United States attorney, western district of Louisiana, which was placed on the Executive Calendar.

Mr. KING, from the Committee on the Judiciary, reported favorably the nomination of Samuel H. Sibley, of Georgia, to be United States circuit judge, fifth circuit, which was placed on the Executive Calendar.



Mr. STEIWER, from the Committee on the Judiciary, reported favorably the nomination of Randolph Bryant, of Texas, to be United States district judge, eastern district of Texas, which was placed on the Executive Calendar.

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, reported favorably sundry post-office nominations, which were placed on the Executive Calendar.

Mr. BLAINE, from the Committee on the Judiciary, reported favorably the following nominations, which were placed on the Executive Calendar:

Joseph C. Hutcheson, jr., of Texas, to be United States circuit judge, fifth circuit; and

Francis M. McCain, of Kentucky, to be United States marshal, western district of Kentucky.

Mr. HASTINGS, from the Committee on the Judiciary, reported favorably the nomination of Carroll C. Hincks, of Connecticut, to be United States district judge, district of Connecticut, which was placed on the Executive Calendar.

HENRY P. FLETCHER

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination of Henry P. Fletcher to be a member of the United States Tariff Commission?

Mr. HARRISON. Mr. President, I ask unanimous consent that the first of the names for membership on the Tariff Commission be passed over and that we proceed to the consideration first of Mr. Brossard. I suggest that for the reason that the main opposition is to Mr. Brossard, and I think it will expedite the consideration of the nominations if that course is pursued.

Mr. WATSON. Let me ask the Senator if Brossard is the only one who is going to be opposed, why not confirm the others and then take up Brossard?

Mr. HARRISON. Personally my main opposition is to Brossard. I think the main fight is going to be on Brossard, and I see no reason why he should not be taken up first, because I will say frankly to the Senator from Indiana, if Mr. Brossard should be confirmed my attitude might be changed completely with reference to the others.

Mr. WATSON. I can not understand the Senator's viewpoint.

Mr. HARRISON. There are many things the Senator from Mississippi does that the Senator from Indiana can not understand. As I understand the situation, the main opposition to these nominees is to Brossard. Why not consider him first?

Mr. WATSON. Of course, they are not in that order on the Executive Calendar, and I know of no reason why we should take up one before it is reached in its proper order. My suggestion is that we consider first those as to which there is no opposition and then proceed to the one as to which there is going to be a fight, according to the Senator from Mississippi.

The VICE PRESIDENT. Does the Senator from Indiana object?

Mr. WATSON. I do. I dislike to object to anything my friend from Mississippi asks, but I object to this suggestion.

The VICE PRESIDENT. Objection is made. The question is, Will the Senate advise and consent to the nomination of Henry P. Fletcher to be a member of the United States Tariff Commission?

Mr. BORAH. Mr. President, I desire to submit some observations with reference to the nomination of Mr. Fletcher to be chairman of the Tariff Commission. I want to preface my remarks by saying that as an individual I have no criticism to offer against Mr. Fletcher. So far as I know there are no criticisms in that respect to be offered. If he were here nominated for a position in the line of the work to which he has devoted his life, I could support him without misgivings of any kind, but he is to be made chairman of the most important, in many respects, commission which we have created and the most expert commission which we have created.

It will be recalled that at the last session the Congress surrendered its ancient and well-protected prerogative of framing tariff bills and levying taxes in that respect and delegated that power to a commission in conjunction with

the Executive. The great argument which was made at that time, and the argument which seemed to control, was that the making of a tariff had come to be purely an expert task, that the Congress of the United States was in the first place uninformed with reference to the subject and in the second place somewhat unwieldy in executing that task, and therefore it was necessary to delegate this power exclusively to a tariff commission. Thus, it was the design of Congress, apparently, to have expert knowledge. We were to have a tariff free from politics and framed by the best students of this subject.

As I have said, I have no objection to Mr. Fletcher as an individual, but Mr. Fletcher has apparently studiously refrained from informing himself in regard to the tariff. Considering that he comes from the great State of Pennsylvania it might be said that he is willfully ignorant of the tariff because of the course which he has pursued. He seemed not to have any interest in it, any desire to know anything about it, and I have understood that he said that it is one of the wonders to him why he was selected for this particular position. I further understand that at first he declined it on the ground that he felt he was not fitted for the work—all the more commendable in Mr. Fletcher. I am perhaps expressing at this time the same ideas which he entertained when advised of the President's desire to name him for a task for which he felt himself quite unfitted.

Let me call attention to the hearings. He was asked by the Senator from North Carolina [Mr. SIMMONS]:

Have you made any study of the tariff?

Mr. FLETCHER. No, sir; not until I came on the commission.

On page 7 appears the following:

Senator HARRISON. What are your general views with reference to tariff?

Mr. FLETCHER. I haven't any general views.

Senator HARRISON. You haven't any views on the tariff?

Mr. FLETCHER. No.

Senator HARRISON. Well, you are a Republican in your views on the tariff, I assume.

Mr. FLETCHER. Well, to that extent, perhaps; yes.

Senator HARRISON. What are the Republican views on the tariff?

Mr. FLETCHER. Well, if you will tell me, sir, that—they are not so awfully different from the views of some Democrats, so I have been told.

Senator HARRISON. Are you what is called a high protectionist?

Mr. FLETCHER. Well, I don't think so. I feel that the system has been adopted in this country.

He "feels" it has been adopted in this country. Mr. Fletcher is not to be criticized because of his timidity in this matter, because he has given no consideration to the matter whatever, but he is to be chairman of the commission which is to take the place of Congress because Congress does not know anything about it.

Senator HARRISON. Do you believe in the theory as followed in this bill as laid down in the flexible provisions, of ascertaining the difference in cost in this country and abroad, and taking into consideration certain things, by which to arrive at that difference in cost of production here and abroad and fix the rate accordingly?

Mr. FLETCHER. Yes; I think we will try to do that to the best of our ability.

Senator HARRISON. Is that your viewpoint?

Mr. FLETCHER. That is the only way I could go about it in order to comply with the law, and that without regard to any views which I may or may not have. I think I could do that.

Again the Senator from Kentucky [Mr. BARKLEY] said:

Senator BARKLEY. Mr. Fletcher, have you sufficiently studied the new tariff law to know whether you care as chairman of the Tariff Commission to say whether the rates are high enough?

Mr. FLETCHER. I have not studied it at all. I expect to learn a little bit about it as it comes along, as each case comes along.

Senator WALSH. Mr. Fletcher, how many years were you in the Diplomatic Service?

Mr. FLETCHER. About 27, I think.

Senator WALSH. And there was a period of time when you were not in the service?

Mr. FLETCHER. Yes.

Senator WALSH. How long was that?

Mr. FLETCHER. Well, there was a period, I think, from February, 1920, until I went back as Undersecretary of State in March, 1921.

Senator WALSH. What did you do during that time?

Mr. FLETCHER. I did not do very much of anything. I went on a trip to Europe. I had not been there for a long time. And when I came back I took some part in the Republican national campaign—made a few speeches against the League of Nations, and a few things like that.



Senator WALSH. Did you resign in order to participate in that campaign?

Mr. FLETCHER. I did not.

Senator WALSH. You stated that you had made no speeches and written no articles upon the tariff?

Mr. FLETCHER. Yes, sir.

Senator WALSH. Did you read any book on the tariff prior to your nomination?

Mr. FLETCHER. No, sir.

Further on:

Senator CONNALLY. Mr. Fletcher, I am sorry that I was a little late this morning. I understood you to say you had never made any special study of the tariff.

Mr. FLETCHER. That is true.

I think that is sufficient to illustrate what I have in mind.

Conceding that Mr. Fletcher is a man of the character and a man above criticism in that respect, which I am very ready to do, as I said, here is an expert board to deal with this particular question which affects the welfare of every man, woman, and child in the United States. It does seem to me most extraordinary that the chairman of that commission should be selected from one wholly uninformed even of the general principles of the subject, and that his equipment should consist entirely of his services, however excellent they may be, in the diplomatic field. He has given no study to the tariff whatever and no consideration to it. Far from being an expert, he is not even informed of the most fundamental principles in regard to it. Why should it be thought wise that these expert commissions should have as their chairmen men who know nothing about the subject and who have never given any consideration to it whatever. It presents a question not alone in regard to this particular nominee as the broader question of what we are doing with reference to these commissions. A few days ago we confirmed—or I now suppose we did—the Federal Power Commission. The chairman of the Power Commission, whatever else may be said pro or con, discloses by his examination that he knows nothing of the subject with which he is to deal. He has given no study and no consideration to it and does not profess in any sense to be an expert in regard to that matter. Can one imagine a more important subject to the people of the United States than the power question? Why should we consent to the placing upon governmental commissions those who disqualify themselves by stating that they are utterly uninformed with reference to the subjects with which they are hereafter to deal?

So we come to the Tariff Commission, which is really a tax-levying commission, a commission which has to deal with the subject of imposing taxes, and we select as the chairman of that commission a man who has no knowledge of the subject, who has given no consideration to it, no study, and who has in no wise equipped himself for the position.

Therefore the question arises, Mr. President, what kind of hybrid monstrosities are we creating and attaching to our Government by constituting special commissions to deal with expert subjects and placing upon them men who are not in any wise qualified as experts in regard to those subjects? The fact is that the Congress of the United States is rapidly delegating its power; we are surrendering the duties imposed upon us by the Constitution; we are turning them over to commissions, upon the theory that the Government is entitled to the benefit of peculiarly expert knowledge. It is a grave matter for those who have been elected by the people, who are directly responsible to the people, to shirk their responsibility and place it elsewhere. If we do so we ought to do so because those to whom we delegate the power are better fitted to perform the task, that they have a fitness nowhere else in the Government to be found.

If we shall proceed to fill these commissions with men who have not expert knowledge, what shall we have done? We shall have created a body which is responsible to no constituency and yet is governed by the same influences by which Congress is governed. If we are to create commissions, which are responsible to no constituency, certainly they ought to have an equipment and that equipment ought to be peculiarly an expert knowledge with reference to the subjects with which they are to deal.

It is often said, as it is being said now, that these commissions will determine the questions presented to them according to the facts and according to expert knowledge. We are told now that the railroad merger question will be settled alone upon the facts and the expert knowledge of the students of it, but we know perfectly well that all governmental commissions are more or less controlled by political influences, coming either from the executive or the legislative department or from both. A few years ago my recollection is that an application of the New England railroads for an increase of rates was refused by the Interstate Commerce Commission. What happened? Had that commission been accorded the respect and treatment to which it was entitled, and had we been willing to accept the expert knowledge of the Interstate Commerce Commission, there the matter would have ended; but it did not end there. There immediately began a tremendous propaganda from one end of the country to the other. It was taken up by the newspapers; it was finally taken up by officials in Washington. Letters and petitions were transmitted, from the Executive down, to the Interstate Commerce Commission, which had passed upon the subject. So tremendous and overwhelming became the public opinion thus fostered and thus propagated and propagandized that the commission, without taking additional testimony, changed its position. It was a public-opinion controlled judgment by one of our expert commissions.

If we are to have commissions I am in favor of letting those commissions do their work without the influence of the outside world, either from the executive or the legislative departments; and if they are equipped, as they should be, as experts, we can feel some comfort when a decision has been made that we have obtained the very best decision that can be reached in regard to the matter, that can be obtained through the commission form of government.

Take, for instance, the Tariff Commission. We know that a former President of the United States felt under the necessity of having some control over the Tariff Commission; so he adopted the plan of asking for the resignation of one or two—I have forgotten which—of the tariff commissioners, in order that such resignation should be in his possession all the time, thus exerting, I take it, a rather strong and powerful influence over the man who had placed the resignation in the hands of the President. It was placed there or requested for no other purpose, I assume, than that the President might reorganize that commission whenever it was thought proper to do so, and it would be thought proper to do so, I take it, when the judgment of the commission ran counter to the views of the President of the United States.

So, Mr. President, in all the commissions which we are creating there is going to be, unless we change our program entirely, this exertion of outside influence from one department of the Government or the other or both, and the only protection against that of which I can conceive is an expert thoroughly devoted to his subject, a man who, as an expert, refuses to yield upon the facts and principles. Unless we are to create that kind of commissions, I repeat, we are creating tribunals to run our Government which are not responsible to the constituency of the country and which at the same time are controlled by political influence.

Mr. President, let us for a moment think of the tremendous powers which have passed out of the hands of the selected, the elected representatives of the people into the hands of tribunals which are responsible to nobody except the appointing power. Questions affecting trusts and monopolies are practically all settled in the Department of Justice and outside the courts of the country. Our taxes are now to be levied, so far as the tariff is concerned, not by the Congress of the United States but by a commission responsible to no constituency save the appointing and confirming power. The power problem is to be dealt with by a commission in the same way. Those matters which most deeply affect the people are being removed in their control as far as possible from the influence of the people. It seems, therefore, to me that, in the first place, after these commissions are created the executive and the legislative departments of the Gov-



ernment ought to keep their hands off of them and let them operate as quasi judicial bodies; and if we are not satisfied with that kind of government then abolish the commissions. Secondly, I think, as we seek to place upon judicial tribunals men who have given their lives to the study of causes and the principles of the law, so we ought to place upon commissions men who have studied the subjects with which they are to deal and who are expert in their knowledge.

Mr. BINGHAM. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Connecticut?

Mr. BORAH. I yield.

Mr. BINGHAM. Did the Senator from Idaho vote to keep his hands off the Federal Power Commissioners after they had started to operate?

Mr. BORAH. I thought I did.

Mr. BINGHAM. I thought, after the appointees had commenced to operate, the Senator voted to have their names returned to the Senate because of something they had done while they were operating.

Mr. BORAH. Oh, the Senator understands perfectly well that it was the contention of those who were dealing with the subject that the Power Commissioners were not legitimately in the office. I stated upon the floor of the Senate, as the Senator would have known had he been in attendance, that I agreed perfectly with the Senator from West Virginia [Mr. Goff] that if they were in office we had nothing to do with them.

Mr. SHORTRIDGE. They were in office.

Mr. BORAH. They were physically in office, but that was a different suggestion.

Mr. BINGHAM. Did the Senator object to the first appointee on the Power Commission because he was an expert or because he was not an expert?

Mr. BORAH. I certainly did not object to him because he was an expert, although I am a little bewildered by the Senator's question.

Mr. President, let me conclude the remarks which I am making by saying that I appreciate how very unpleasant it is for anybody to suggest rejecting an appointee when there is no attack upon his character—and I make none upon Mr. Fletcher's character—but I am perfectly clear that we are face to face with the proposition, first, of what kind of men we are going to place upon governmental commissions, and, secondly, what we are going to do with the commissions after they are created. I want to see expert men upon the commissions and I want to see the commissions left alone to do their work until we shall see fit by law to abolish them.

Mr. REED. Mr. President, if I have understood correctly the position taken by the learned Senator from Idaho [Mr. BORAH], it is that the ideal appointment to a commission of this sort would be an expert trained as is a lawyer and qualified for service on the commission as a lawyer is trained for service upon a court. If there existed any such person in this world, I agree that he might be a highly desirable appointee; but there is no such person as a disinterested tariff expert in the sense that there are lawyers of general practice who are disinterested. Men become tariff experts because they are retained by particular interests to prosecute particular points of view; men become tariff experts because they are importers and have constantly to deal with the customs authorities and customs laws of the United States, and it is a matter of bread and butter that they should be experts in those laws in order to get their goods imported at the lowest possible cost; men become tariff experts because in the United States they manufacture articles upon which there is a tariff duty which gives them protection; but none of those men are disinterested experts in the sense that a lawyer is a disinterested expert in the law and is qualified thereby for service on a court.

If we were to put in the law a provision that the Tariff Commission should be composed solely of disinterested tariff experts, it is probable that the membership would never be filled.

What then? Since such persons do not exist, we have the choice of selecting persons who by interest and experience have developed a profound conviction on one side or another of the endless tariff controversies. We could put in, let us say, the president of the manufacturers' association of one of the great manufacturing States. He would be a tariff expert, surely, but he would not be disinterested; and his long experience would lead him almost inevitably to take a bias in favor of the highest possible duty.

Neither of those appointees, in my judgment, would be proper appointees to this commission. We do not want men to go on the commission with firm and unyielding convictions in favor of either extreme of this tariff controversy. The ideal person would be a disinterested expert; but no expert is disinterested. Consequently, the next best person to appoint would seem to be a citizen mature in judgment, patriotic by proven experience, intelligent, obviously, absolutely disinterested, and not taking sides between these two great groups.

That is what we have here. In Mr. Fletcher we have a lawyer; a soldier with a superb record in the Spanish War and the Philippine campaign that followed it; a diplomat of trained experience, who has learned from observation that the world is round, and that the same kind of human beings live on the other side of the ocean, with the same problems; who has learned to look at our international relations from something more than a parochial or provincial point of view; a man of proven patriotism, both in his military work and his long diplomatic service; a man who has no interest whatsoever in either the importation of foreign articles or the domestic manufacture of their competing articles—in other words, who has no bias, because of his own self-interest, toward either side of this controversy—a man, 58 years of age, who has never taken an active part in any kind of tariff agitation or tariff lobbying, who never was on either side of the tariff case; and a man of fine intelligence, it is admitted by every one who has met him or has had a chance to size him up.

I can not imagine how a better appointment could have been made; and I speak, not as a protectionist, but as one who wants the Tariff Commission to function as a court functions, with an integrity that will be understood by all of the citizens of this country who have to deal with the commission.

Obviously, an expert of the type of Mr. Marvin, the former chairman, could not to-day be confirmed if he were appointed to that commission, because of his long and persistent activities in behalf of the Home Market Club, of which he was for a time one of the principal officers. He has been labeled a tariff lobbyist. I can understand that a man of his background would not be accepted by a majority of the present membership of the Senate for a position on the commission. But if a man of that type is not eligible, and if a disinterested person, who has no bias toward either side of the controversy, is not eligible, it restricts our choice to a person who is an avowed free-trader; and surely no one can contend that we want to create a tariff commission composed exclusively of persons who want to beat down the duties under a tariff law that is avowedly protective.

If we are not to go to either extreme; if we want a man whose character has not been criticized by any person on this floor or off it, a man whose intelligence is beyond question, and whose patriotism is all that any man's can be, we have him here.

Mr. BORAH. Mr. President, just a word.

Of course there are more people in the country than lobbyists on one side, and men who are wholly uninformed about a subject upon the other side.

The Senator from Pennsylvania is quite correct in the proposition that we do not desire the kind of an expert who has been engaged as a lobbyist, and so forth; but that is far from answering the proposition that there are in the country plenty of men who are entirely familiar with this subject, who have been students of the subject, who have not



been lobbyists, and who are not representing firms before the Congress or elsewhere.

As I understand, the other members of the commission, at least three of them, have been selected over somewhat strenuous objection because they are deemed to be experts; and it has been desired, apparently, to secure men who were experts. But there is selected as the chairman of the commission a man who says himself he knows nothing about the subject, has not been interested in it, has given no study to it, and has no opinions in regard to the subject.

If this were going to be the only case of this kind, I should not have said a word, because instead of disliking Mr. Fletcher, personally I like him; but inside of 10 years, if these commissions continue and this practice continues, they will be filled up with men who are to be taken care of, politicians who have had an accident, instead of expert students of the subject.

Mr. REED. Mr. President, I ought to add one sentence, and that is that Mr. Fletcher was not an applicant for this position, and it required a good deal of persuasion to induce him to accept it.

Mr. KING. Mr. President, I shall trespass upon the Senate for just a moment. If I rightly interpreted the remarks of the Senator from Pennsylvania [Mr. REED], I think he placed too narrow a construction upon the word "expert" as it was employed by the Senator from Idaho. As I understood the Senator from Idaho, his position was that persons employed to fill boards and commissions, such as the Tariff Commission and the Power Commission, should possess some knowledge of the subjects with which they have to deal in order that they may intelligently and ably and in the interests of the people discharge the duties their respective positions impose upon them. Certainly no man should be appointed to a judicial position who had no knowledge of law, and persons named for positions upon the Tariff Commission should have some knowledge of the fundamental principles of political economy, of trade and commerce, and of the effects of tariff legislation. The peoples of the world are being drawn nearer together, and the interests of the peoples, in a material and a business way, as well as in other fields of vital importance, are not circumscribed by national boundaries.

The trade and commerce of every civilized country is not confined to its own borders and to its own people. We have a bureau of foreign and domestic commerce for the purpose of promoting, not only domestic production and consumption, but international trade. This organization should have men who are familiar with the resources of our country and of other countries and of the great tides of trade and commerce that sweep around the world. They should have expert knowledge of the conditions of business and trade and commerce, not only in the United States but in other lands. They should know something of the tariff question and reciprocity as between nations, and international exchange and the business and commercial forces which make for national and international prosperity.

One of the most important commissions in the Federal Government is the Tariff Commission. Its powers under the Fordney-McCumber Act and the recent tariff law have been greatly enlarged, and the importance of this Federal agency has received thereby additional emphasis. It is not too much to say that this commission can materially affect the business interests of the American people whether its interests are domestic or international. Those appointed to this important body should be students of public questions, of political economy, of the resources of our country, of our complicated business structure, and of the essential elements underlying trade and commerce. They should be acquainted with the tariff structures of this and other countries and the economic conditions in the United States and elsewhere. They should not be provincial, but have that breadth of view that comes from contacts with the world and a knowledge of the growing interdependence of communities and nations. The ideal tariff commissioner will have a comprehensive knowledge of business conditions here

and abroad—the influence and effects of tariff rates upon trade and commerce; and, of course, he will have an intimate knowledge of the productive forces in the United States and other countries.

I appreciate that a man might be competent and qualified for a position on the Tariff Commission who might not qualify as an expert—using the term in its narrow sense—upon the tariff question per se; but in my opinion a man should not be named for a position on the Tariff Commission who knows nothing of political economy, of the great field of trade and commerce and the fundamental principles which underlie the business structure of our country and of other countries, and of the ties—fiscal, commercial, and otherwise—that bind the world together.

Mr. REED. Will the Senator yield?

Mr. KING. Certainly.

Mr. REED. Nothing of that sort has appeared against Mr. Fletcher, certainly. He did not say that he did not understand the principles of political economy. He said he did not know the details of the tariff law.

Mr. KING. Mr. President, I am unable to give to the testimony of Mr. Fletcher the same construction as that placed upon it by my distinguished friend, nor do I mean to say that Mr. Fletcher's knowledge of some of the matters to which I have referred is as limited as might be inferred from his answers to questions submitted when he was before the Finance Committee. Indeed, I think Mr. Fletcher has considerable knowledge of public questions of international relations, and he possesses character and ability. I agree, however, with the Senator from Idaho that he is not an "expert" upon the tariff question, nor do I think his knowledge of the fundamental questions involved in tariff legislation and in trade and commerce is as broad and comprehensive as that which should be possessed by the ideal tariff commissioner.

My purpose in rising, however, was to state that in my opinion the Senator from Pennsylvania [Mr. REED] gave to the remarks of the Senator from Idaho [Mr. BORAH] a narrow and restricted meaning.

It is becoming more and more apparent that governmental functions are being devolved upon commissions. Efforts are being made to relieve executive officials of the responsibilities which should rest upon them and to take from Congress authority which it should exercise. We find the same tendency in our State governments. Scores of commissions are created, and executive and legislative responsibilities are passed on to these commissions. If some supposed evil exists in our political or economic life, immediately the cry goes forth that a commission must be created; and too often when the commission is created responsible officials and the people forget its existence, and it soon falls into a moribund condition or is perpetuated as a parasitic growth. Without desiring to criticize the President, I call attention to the fact that he has created a large number of commissions, and some of the heads of the departments have followed his example and have created boards and commissions and Federal instrumentalities. These commissions invade nearly every field of human endeavor and intrude themselves into the States and seek to regulate the control of the domestic concerns of sovereign States. As I have indicated, the suggestion of a new problem, or an old problem in a disguised form, speedily produces a commission—supported, of course, by an appropriation—to investigate or to advise or to collect data, or to do something that should be done, if done at all, by an existing agency, State or National. The mania for commissions is growing, and with its growth the forces of bureaucracy are strengthened.

Mr. President, if we are to be governed by commissions, let us try and have commissions of able and competent persons—persons possessing expert knowledge of the questions with which they are to deal and of the duties which they are to discharge.

Mr. SHORTRIDGE. Mr. President, Senators present will pardon me if I detain them for just a moment before expressing their opinion with respect to this nomination.



The observations of my friend from Idaho [Mr. BORAH] called up to my mind that this question as to whether Congress was delegating a legislative power to the commission is a question that was raised long ago, maturely considered by the Supreme Court, and by that court decided that there was not, in a constitutional sense, a delegation of legislative power to the commission.

During the discussion of the tariff bill in this body last year I took occasion to say that I was not enamored of this flexible provision in the bill, section 336. I was not enamored of that type of legislation, namely, the delegating of power to a commission, even to find certain facts upon which the principle of the bill was to be applied.

In brief, the other day I called attention to the fact that section 336 of the existing tariff law reads:

In order to put into force and effect the policy of Congress by this act intended—

The act declares a policy. For brevity, I call it a protective policy, the meaning of which everybody, of course, understands. This act declares that policy, and in order to carry out that policy we, the Congress, fixed certain rates on certain imported articles, and we declared how or in what way we were to carry out that policy; wherefore section 336 provides further:

In order to put into force and effect the policy of Congress by this act intended the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article.

Then the section proceeds to point out what they shall consider—substantive facts, not policies or theories of legislation, but substantive facts as to the cost of production of a given article in a foreign country and in our own. They are not changing the policy of Congress, they are not legislating in respect to a policy; they are specifically charged with the ascertainment of certain facts "in order to put into force and effect the policy of Congress by this act intended."

I will not trouble the Senate by reading the rest of this section, which goes into details. It points out what the commission shall ascertain, and, having ascertained it, they are to make certain findings of fact, which facts found, in a word, are as to the cost of the manufacture or production of the given foreign article and the cost of manufacture or production of a like article here, and in order to carry out the policy of Congress in this act intended and specifically set forth, they are to find that it would be necessary to raise the given rate perhaps to the extent of 50 per cent thereof, or lower it to that extent, in order, I repeat, to carry out the policy of Congress intended and specifically and again and again set forth in this act.

Then what? Their findings are not conclusive. They report their findings to the President, and he, in like manner, is charged under his oath to carry out the policy of Congress; and if he, examining these findings of facts, thinks that they are based upon competent, relevant, sufficient evidence, he approves those findings. If he does not so think, he disapproves, and the rates fixed in the law remain unchanged.

I rose merely to say that originally, and even now, I am not enamored of this flexible-tariff provision; but it is not a delegation of legislative power, and—addressing my friend the Senator from Idaho—I see in it no present danger to the industries of our country. If I did, I would seek to expunge that section from the law; but for reasons into which I need not go, I see no present danger in section 336, and if properly interpreted there may be much good in it.

Mr. NORRIS. Mr. President, I desire to ask the Senator a question, if he will permit.

Mr. SHORTRIDGE. I yield.

Mr. NORRIS. I would like to have the Senator tell the Senate whether he agrees, then, or whether we are justified in drawing the conclusion from what he has said that he does agree, with the Senator from Pennsylvania, that in the selection of tariff commissioners it is not even possible to

get experts, and therefore that all we have to do and what we ought to do is to confine ourselves to getting men of learning and ability such as it is conceded Mr. Fletcher possesses.

Mr. SHORTRIDGE. Mr. President, my answer would be that substantially given by the Senator from Pennsylvania. What is an expert? Those of us who have practiced for many years in the courts have had something to do with experts, and, of course, we know how prejudiced they may be in favor of the one or the other theory which may be involved in a case.

What I want, and what I assume we all want, is a man, first, of unimpeachable character, who can not be and will not be improperly influenced by any one or any set of men.

Second, we want a man of intelligence, who can listen, who can hear, who can take evidence, and logically reach and maintain a finding such as we would ask of a jury, such as we would ask in a court.

Inasmuch as the law declares the policy of Congress and furnishes the metewand, tells the commissioners what they shall investigate and what they shall find, and that there must be evidence—competent, persuasive, sufficient evidence—to sustain their finding, the ideal man, in my mind, is such a one as Mr. Fletcher, who we know does not seek the position, a man who frankly says, "I have not devoted my mind specifically to tariff matters as such," a man of character, of ability, of wide experience, of a vision which takes in all nations, peoples of the earth. I think he is preeminently qualified to listen to and pass upon the evidence which will be presented to the commission.

There are matters which I desire to bring before that commission. I have two resolutions pending here now, filed at the request of people from my State and many of the other Western States. If I go before that commission to lay facts before it, I want to know that I am submitting those facts to a man with logical mind, of intelligence, who will not brush me aside or brush aside the evidence because of some specific knowledge he has, or thinks he has, on the subject, or because of some theory he holds as to policy; I want to submit facts to a man who will be guided by the facts and the law, even as the Senator from Nebraska was guided when he sat in a court of justice. Therefore I think, with great respect to my friend the Senator from Idaho, that we have in Mr. Fletcher the ideal man for this position.

Mr. NORRIS. Mr. President, with great respect for the Senator from California, I want to ask the Senator another question, if he will permit.

Mr. SHORTRIDGE. I yield.

Mr. NORRIS. I think the Senator has exhibited his usual ability, more ability in avoiding an answer to my question than he would necessarily have to have if he would answer it.

Mr. SHORTRIDGE. Will the Senator be good enough to propound the question again? I will make my answer responsive.

Mr. NORRIS. I am compelled to say that, in my judgment, the Senator has not yet answered the question. I would like to have the Senator tell us whether he agrees with the Senator from Pennsylvania in the theory that in selecting members of this commission we are not able to get experts on the tariff unless we take experts who are biased on one side or the other.

Mr. SHORTRIDGE. I will answer responsively. It might be possible to get a man who calls himself an expert on the tariff who is not prejudiced, perhaps, a man who might be able to tell us that he had studied the first tariff bill, which was signed by George Washington, and which was a protective tariff bill; that he had gone down through and read the debates in every great tariff contest; that he had listened to Breckinridge and Henry Clay and Daniel Webster and Calhoun, and, he might add, that he believed in the views of William McKinley, who agreed to a bounty on sugar instead of a duty—the only time when McKinley faltered in his protective tariff doctrine. He might go on and say, "I have spent hours in reading the arguments of Sir Robert Peel," who changed his theory completely upon the tariff question, as the Senator knows; he might, as in a court, qualify himself



to be an "expert." But it does not follow that he would make a good or a better commissioner.

Mr. NORRIS. If he did all those things, he would probably be a rather old man, and disqualified on account of age, probably.

Mr. SHORTRIDGE. That might be; but I have read them all, and I am not an old man.

Mr. NORRIS. Oh, no; the Senator is a young man. The Senator said that he might say that he had listened to all these debates. Probably in his anxiety to avoid, if he is avoiding, a direct answer to my question, the Senator has referred to it in rather a sarcastic way. I am asking my question in the best of faith. I want to propound it to the Senator again. Does the Senator agree with the Senator from Pennsylvania when he says that it will not be possible to get experts to serve on this commission unless we elect men who are biased one way or the other?

Mr. SHORTRIDGE. I thought I had answered. I say, it may be possible; yes. That is a direct answer to the Senator's question.

Mr. NORRIS. Would it be desirable to have such a man, if we can get him, in preference to a man like Mr. Fletcher, who admits he does not know anything about it?

Mr. SHORTRIDGE. I am not prepared to say it would be advisable, even assuming we could get him.

The VICE PRESIDENT. The question is, Does the Senate advise and consent to the nomination of Henry P. Fletcher to be a member of the United States Tariff Commission? [Putting the question.] The ayes have it, and the Senate advises and consents to the nomination.

THOMAS W. PAGE

The PRESIDING OFFICER (Mr. Fess in the chair). The question is, Will the Senate advise and consent to the nomination of Thomas W. Page, of Virginia, to be a member of the United States Tariff Commission for the term expiring June 16, 1935?

Mr. BORAH. Mr. President, I understand Mr. Page is an expert. I would like to know under what interest he became an expert.

Mr. GLASS. Mr. President, I may say that Doctor Page is the man who, in the opinion of the Senator from Pennsylvania [Mr. REED], has no existence. Doctor Page is an expert, and a thorough one, in every sense in which that term may properly be used. He never represented any interest and could not be induced to represent any interest. He was a distinguished teacher of political economy at the University of Virginia. He was for some years a member of the Tariff Commission, and I could not better present his type of man than by stating that he resigned his position on the Tariff Commission because of his unwillingness to permit executive authority to create a sense or measure of subservency on the part of the commission.

While I do not know, I confidently express the belief that he was not, as he never was, an applicant for this or any other job. He knows the tariff. He is a man of unblemished integrity, and, as I have said, of exceptional and unusual ability. He is the man who the senior Senator from Pennsylvania says does not exist.

Mr. NORRIS. Mr. President, I feel very badly about Mr. Page. Personally, I would like to see him confirmed. I think if he were confirmed, he would make a very good official. But it is exceedingly unfortunate that he will probably be rejected by the Senate. My own idea is that he would add to the efficiency of this great commission, but, unfortunately for him, he knows something about the business of the commission, and he will therefore, of course, incur the opposition of the great Senator from Pennsylvania. Certainly the Senator from Pennsylvania will not support a man for this position who is biased one way or the other, and certainly we can not contradict the statement of the Senator from Pennsylvania that there are no experts unless they are biased one way or the other.

That excludes Mr. Page, I am sorry to say. It puts him aside. Much as I dislike to see it done, the Senate will be on record again, as the newspapers will say in flaming

headlines, as fighting the President of the United States and not confirming his nominations. It would put us again in the very unfavorable attitude of being contrary to the administration.

Mr. Page, I think, has shown by his service that he possesses expert knowledge on the subject of the tariff. I am not informed as to which side he belongs, but I know that he belongs to one side or the other because the Senator from Pennsylvania has laid down the broad rule without any exception that if a man knows anything he is not qualified to act because his knowledge puts him on one side or the other and makes him biased and prejudiced, and therefore disqualifies him from passing in a judicial manner upon the questions which may come before the commission, and thus he is not able properly to perform the functions of the office. So he will have the opposition of the Senator from Pennsylvania [Mr. REED].

I am not sure, because not so fully expressed and not so definite, but from his answers that he gave to the questions I propounded or from the way he avoided the questions I propounded, I can not help reaching the conclusion that the great Senator from California [Mr. SHORTRIDGE] will be against him also because he knows something about the position to which he has been appointed. With that opposition combined with the opposition of the Senator from Pennsylvania, of course, Mr. Page stands no show of confirmation.

Mr. REED. Mr. President, Doctor Page is not an exception, although perhaps I should have made an exception to the generality of my remarks. He was a distinguished political economist when he was appointed to the Tariff Commission. He became an expert in tariff matters because of his work on the commission. He is a fine man. I know of nothing whatever against him except that he is a Democrat. He is an authority on the tariff and his appointment is one in which we all ought to take pride.

Mr. SHORTRIDGE. Mr. President, I rise merely to express my sorrowful regret that the Senator from Nebraska was sufficiently an expert to understand my answers to his questions.

Mr. NORRIS. Mr. President, I am glad to have the judgment of the Senator from California, because it immediately qualifies me to hold any office, even a position in the Senate, according to the definition of the Senator from Pennsylvania. [Laughter.]

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Thomas W. Page, of Virginia, to be a member of the United States Tariff Commission for the term expiring June 16, 1935? [Putting the question.] The ayes have it, and the nomination is confirmed.

JOHN LEE COULTER

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John Lee Coulter, of North Dakota, to be a member of the United States Tariff Commission for the term expiring June 16, 1934? [Putting the question.] The ayes have it, and the nomination is confirmed.

ALFRED P. DENNIS

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Alfred P. Dennis, of Maryland, to be a member of the United States Tariff Commission for the term expiring June 16, 1933?

Mr. HARRISON. Mr. President, I was one of two Senators, I think, one of the majority and myself of the minority, who voted against the favorable recommendation of the nomination of Alfred P. Dennis. I did it for very peculiar reasons, I presume. I am not one of those who feel called upon every time the President sends a nomination here to fight the nomination. I have an idea that when a man is President of the United States he is generally going to appoint people to carry out the policies and principles upon which he was elected, and so I always ask myself the question when nominations come here, Is the man honest, is he capable, is he tied to some special interest that might in-



fluence him in the faithful discharge of his duties? If he is tied to some special interest, then I vote against his confirmation. If he is dishonest, or if in my opinion he is corrupt, I vote against his confirmation.

One of these nominees I very much oppose, and as to him I shall present my views to the Senate when his name comes up next. I voted against Mr. Dennis—not that there was any question of his honesty, because I think he is a man of fine character and honesty and has rendered some very fine service to the country. I felt that he was a little bit too subservient to the powers that be—such subserviency that should not be tolerated by independent public servants. His views on the tariff are, in my opinion, for the most part correct. I have no score with him on that line. I may differ at times with him about some of them, but in the main, in my opinion, he has very splendid tariff views. He is a real tariff expert. But his subserviency in a way as reflected in certain circumstances which I shall not narrate here make me think that he would not make the right kind of commissioner on the Tariff Commission.

Then, too, Mr. President, while we were in the grip of a heated contest here over the tariff question and there were two sides presented to the country and the papers were aflame each day with their views on this theory and that theory there was issued from the Tariff Commission a statement signed by Mr. Dennis and signed by Mr. Brossard, and by those two only, saying that agriculture would be greatly benefited by the passage of the tariff bill. The committee in making this investigation ascertained that when the first draft of this very remarkable and now historic document came to the eagle eyes of these distinguished gentlemen it only said that "agriculture will be benefited" to a certain percentage as relating to importations, and so forth. It was a highly technical expression. It expressed in a technical way probably a correct theory according to these gentlemen. But Mr. Brossard did not think that the statement had enough punch in it, so he made it read that "agriculture will be benefited by the passage of the tariff act," and then finally it was changed and the word "greatly" was inserted. Mr. Dennis wrote his notation on this remarkable report that he had read it and in substance it was very fine.

We were told, however, before the Finance Committee when these nominations were being considered that Mr. Dennis was not familiar with this expression, that it had been changed, that it had been changed by a publicity expert of the commission, and that he signed it under a wrong impression, and Mr. Brossard took the blame for the whole proposition. It seemed to me a commissioner ought to know more than just to sign papers in that way, and if he did sign it, it was most reprehensible.

Mr. WALSH of Montana. Mr. President—

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Montana?

Mr. HARRISON. I yield.

Mr. WALSH of Montana. Let me ask the Senator from Mississippi what was the occasion for the issuance of this pronouncement?

Mr. HARRISON. There was no reason for the issuance of it. The House of Representatives had called on the Tariff Commission to submit a certain report with reference to tariff rates, and so forth, and this was a statement that Mr. Brossard and Mr. Dennis, who were the committee, I may say, on publicity appointed by the full commission, gave to the press. They did not think that the cold statement of facts which was sent to the House had sufficient "punch" in it, as I have said, or would attract the eye of the reading public; and so there were inserted in the beginning of the statement words to the effect that agriculture would be greatly benefited by the passage of the bill.

Mr. WALSH of Montana. It seems to me that it was an extraordinary document issued by the commission, proclaiming that the tariff law, as proposed, would be beneficial to agriculture.

Mr. HARRISON. Yes; that is quite true.

Mr. SMOOT. Mr. President, will the Senator from Mississippi yield?

Mr. HARRISON. I will yield in a moment. Let me say that, of course, when this statement was issued there were some speeches made on the floor of the Senate calling attention of the country to this remarkable incident. Mr. Dennis immediately got in touch with certain Senators; he sent some one to see me, and afterwards himself talked to me about it, disclaiming any knowledge of the matter at all. As I have said, the other day before the Finance Committee Mr. Brossard took the whole blame, because, he said, after the change was made, he directed Mr. Conrad, the publicity man, to be sure to tell Mr. Dennis of this change, and he came to the conclusion that Mr. Conrad did not tell Mr. Dennis anything about it.

Mr. SMOOT. Mr. President—

Mr. HARRISON. I yield to the Senator from Utah.

Mr. SMOOT. The Senator from Montana asks why this statement was issued. The Senator will remember that the commission was instructed to ascertain the volume of importations and the rates of duty on those importations under the then existing law and under the proposed law. The report of the Tariff Commission showed that 68 per cent of the increased rates affected agricultural products and products on which compensatory duties were levied because of the increased duties on agricultural products, while 32 per cent covered all other products on which increased rates were levied. That is why it was done.

Mr. WALSH of Montana. That is information; those were facts given to Congress by the commission, and, of course, that is what they are there for; that is all right; but when and how did the commission obtain the power to express an opinion as to whether a proposed law was beneficial or was not beneficial?

Mr. SMOOT. There was not any question that 68 per cent of the increased duties affected agricultural products, and the statement was based upon that fact.

Mr. WALSH of Montana. There is no question about that; that was the fact.

Mr. HARRISON. Mr. President, the Senator from Utah will agree, I think, that the commission should not have issued that kind of statement and that they were going beyond the bounds of reason and of their authority when they stated this conclusion, which was merely an opinion. It would have been all right to have given the statement which they sent to Congress in the first place, but they went too far in giving a conclusion.

That is all I desire to say as to Mr. Dennis. The matter referred to, as well as the reasons I have stated, influenced me to vote against him in the committee. The reasons for that action may appear to be very negligible. As I have said, there is nothing against the character of Mr. Dennis; he certainly has knowledge of the tariff; but I thought he was a little bit too subservient to certain interests.

Mr. COPELAND. Mr. President, as I understand, the Senator from Mississippi is not pressing any serious objection to Doctor Dennis.

Mr. HARRISON. I felt, as a member of the Finance Committee, that I ought to state to the Senate the reasons that prompted me in voting against him in the committee; but I want every Senator to vote his own convictions.

Mr. COPELAND. I wish to say that I have found Doctor Dennis alert, diligent, intelligent, and a very useful member of the commission. I am glad the Senator from Mississippi joins in that feeling regarding him.

Of course, there is ample explanation for the publicity which went out, although I agree with the Senator that it was unfortunate. I believe that is the feeling of Doctor Dennis. Certainly that should not be held against him, and of course will not be. I hope that the nomination of Doctor Dennis may be confirmed by the Senate.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Alfred P. Dennis, of Maryland, to be a member of the United States



Tariff Commission for the term expiring June 16, 1933? [Putting the question.] The ayes have it, and the nomination is confirmed.

As in legislative session.

#### MINUTES OF UNITED STATES TARIFF COMMISSION

The PRESIDENT pro tempore laid before the Senate a communication from the chairman of the United States Tariff Commission, transmitting certified copies of the minutes of the meetings of the commission from January 28, 1927, to December 1, 1930, inclusive, pursuant to Senate Resolution 370, of January 5, 1931, which, with the accompanying papers, was ordered to lie on the table and to be printed.

#### CLAIMS RESULTING FROM EXPLOSIONS AT NAVAL AMMUNITION DEPOT, LAKE DENMARK, N. J.

The PRESIDENT pro tempore laid before the Senate a communication from the Comptroller General of the United States, submitting, pursuant to law, a report, with his recommendations thereon, of certain claims transmitted to his office by the Secretary of the Navy covering property damage, death, or personal injury in connection with the explosions at the naval ammunition depot, Lake Denmark, N. J., on July 10, 1926, which, with the accompanying papers, was referred to the Committee on Claims.

#### EDGAR B. BROSSARD

The Senate being in executive session,

The Chief Clerk announced the nomination of Edgar B. Brossard, of Utah, to be a member of the United States Tariff Commission for the term expiring June 16, 1932.

The PRESIDING OFFICER (Mr. Fess in the chair). The question is, Will the Senate advise and consent to the nomination which has just been read?

Mr. HARRISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	Keyes	Shipstead
Barkley	Frazier	King	Shortridge
Bingham	George	La Follette	Simmons
Black	Gillett	McGill	Smith
Blaine	Glass	McKellar	Smoot
Borah	Glenn	McMaster	Steck
Bratton	Goff	McNary	Steiwer
Brock	Goldsborough	Metcalf	Stephens
Brookhart	Gould	Morrison	Swanson
Broussard	Hale	Morrow	Thomas, Idaho
Bukley	Harris	Moses	Thomas, Okla.
Capper	Harrison	Norbeck	Trammell
Caraway	Hastings	Norris	Tydings
Carey	Hatfield	Nye	Vandenberg
Connally	Hawes	Oddie	Wagner
Copeland	Hayden	Partridge	Walcott
Couzens	Hebert	Phipps	Walsh, Mass.
Cutting	Heflin	Pine	Walsh, Mont.
Dale	Howell	Ransdell	Watson
Davis	Johnson	Reed	Wheeler
Deneen	Jones	Robinson, Ark.	Williamson
Dill	Kean	Schall	
Fess	Kendrick	Sheppard	

Mr. WATSON. I desire to announce that my colleague the junior Senator from Indiana [Mr. ROBINSON] is necessarily absent on account of a death in his family.

The PRESIDING OFFICER. Ninety Senators have answered to their names. A quorum is present.

Mr. HARRISON. Mr. President, we have now reached in the consideration of nominations for members of the Tariff Commission the one about whom the greatest amount of controversy has centered. I refer to Mr. Brossard.

Mr. Brossard was appointed as examiner in the Tariff Commission some years ago. He had excellent indorsements. He served in that capacity, and rendered, so far as the sugar interests of the country are concerned, very distinguished service. Mr. Brossard was called to Washington while he was working as an economist in the agricultural college in Utah. He stated in his testimony before the committee that his first knowledge of the appointment came in the form of a telegram which he received from the Tariff Commission asking if he wanted the position. He accepted it; he came to Washington and worked for the commission.

It will not be forgotten by the Senate and the country that perhaps the most important question that has been considered by the Tariff Commission was that dealing with the difference in the cost of production of sugar here and abroad. It was that question which tore the commission apart and influenced resignations upon the part of certain of its members. It led to the historic occasion when the recommendation of a majority of the commission was ignored and pigeonholed by the President of the United States. It was one of the occasions when the consumers of the country were ignored by the President when he refused to accept the recommendation of a majority of the Tariff Commission.

A majority of the commission, it will be recalled, reported that the difference in the cost of the production of sugar here and abroad would justify a duty of about 1.23 cents, and the report called for a reduction of the tariff rate which the law at that time imposed upon sugar. The contest to bring about that report was led by certain progressive gentlemen of the commission, namely, Mr. Culbertson, Mr. Costigan, and Mr. Lewis. They received for that work the condemnation, of course, of the sugar interests of the country, as well as the powers that influenced the Executive Office, because some of them were refused reappointment and one of them was sent abroad as minister to Rumania, I believe; and afterwards in the Committee on Finance, hearing the expressions of my distinguished friend from Utah [Mr. Smoot], as well as my friend from Indiana [Mr. Watson], they expressed great merriment and rejoicing that he was gone, and they said the only regret they had was that he was not sent farther than Rumania.

Mr. SMOOT. That does not apply to the Senator from Utah.

Mr. HARRISON. That may not apply to the Senator from Utah, but the Senator from Utah was very glad he was gotten off the Tariff Commission. I think the Vice President of the United States, who was then a very important cog in the Republican organization here, and an important figure on the Finance Committee, was in the confab when they were talking about these various people.

Since then, of course, Mr. Costigan has been elevated out in Colorado, even though it is a great sugar State, to a place in this body; but in the work of the ascertainment of difference in costs of sugar by that commission, this adopted son of Utah—Mr. Brossard—performed very splendid service, not to majority members of the commission, who were for a reduction of the rate on sugar, but because his views reflected the views of Mr. Burgess and Mr. Marvin, the minority members of the Tariff Commission, who were trying to secure, through every possible way, an increase over the existing rate on sugar. Mr. Brossard, as an expert for the Tariff Commission, had a theory of ascertaining difference in cost that was different from that of the majority members of the committee, led by Mr. Costigan and Mr. Culbertson and Mr. Lewis and their experts. He wanted to confine the ascertainment of the difference in cost to a certain recent period in Cuba and then find the cost in this country. The other members of the commission—that was one of the differences—thought it was very well that there should be taken into consideration the cost of producing sugarcane in Hawaii as well as sugarcane in Porto Rico, and put it with the cost in this country, because from Porto Rico and from Hawaii it was duty free.

The majority members of the Tariff Commission thought that this ascertainment ought to be over a period of six years; but the adopted son of Utah—Mr. Brossard—thought it ought to be confined to just two years. In other words, the difference as expressed by these experts and these commissioners led to the conclusion that Mr. Brossard's figures would carry up high the rate on sugar, while those of the others would maintain it down at about 1.23 cents per pound. So Mr. Brossard has very decided views with reference to sugar rates. It perhaps is as close to him as any other subject.

I say, Mr. President, that the President of the United States was duly warned with reference to this nomination. In speech after speech upon the floor of the Senate, and



through statement after statement to the press, the President was advised that there would be strong opposition to Mr. Brossard should he conclude to send his name here as one of the Tariff Commissioners. He has challenged those protests.

The other commissioners have been confirmed. Only one, Mr. Dixon, remains on the calendar, except Mr. Brossard; and there is no opposition to Mr. Dixon's confirmation. The opposition is to Mr. Brossard, because some of us who have made this investigation believe, first, that he is too close to this one interest, namely, sugar; that he has formed and expressed an opinion already; he entertains it. He would drive the tariff on sugar still higher if it were within his power to do so, and he will have great power to do so. In appearing before the Finance Committee touching this confirmation he stated that he had something to do with preparing data upon which this report of the minority members of the commission found \$1.89 per hundred as a fair ascertainment of difference in cost of production here and abroad, and he said that under present conditions, under that formula, the tariff ought to be still higher.

That is very pleasing to the Senator from Utah. It would be pleasing to him if all the other members of the commission had so expressed themselves. Every Senator here who can be influenced by the distinguished chairman of the Finance Committee will vote to seat and confirm Mr. Brossard, to give him a further lease of power up there to carry out his formed opinions, and put upon the American people increased taxes on sugar.

That in itself would be sufficient reason for me to vote against Mr. Brossard's confirmation. He is too closely knitted and tied in with that interest. He has formed and expressed an opinion with reference to it. As I say, he helped to prepare the report that was sent to the President by minority members of the committee. These conclusions he has formed are quite enough to defeat his confirmation; but that is not all, Mr. President.

Men who occupy places upon the Tariff Commission or any other commission ought to be open and frank and candid and honest with the Congress and with the public. They ought never to indulge in hypocrisy, deceit, double-dealing, or evasiveness when it comes down to public questions. I do not suppose, in all the legislative history of this country, another case can be found that is on a par with the Brossard case so far as evasiveness and misstatement of facts are concerned.

Can any Senator vote for the confirmation of a man that they think will deliberately withhold facts from a committee, or through evasiveness mislead the committee? Do you believe in that? Of course you do not. What kind of government would we have if we had men upon these commissions who were not frank and open with the public and with the Congress? And yet, Mr. President, a few years ago, when a select committee of the Senate was making an investigation into the Tariff Commission, trying to find out what was the trouble up there and why all these various factions and groups existed, they brought Mr. Brossard before that committee; and the record will show the evasiveness and concealment that I have stated. I am not going to read that part of the record. I am going to leave it to the distinguished senior Senator from Wisconsin [Mr. LA FOLLETTE], who was a member of that committee at that time; but there is not a member of the committee who will deny it, because it is there.

Mr. Brossard denied, Mr. President, before that select committee, that he had prepared any part of the report that was signed by Marvin and Burgess that sought to increase the tariff on sugar. Oh, he was a perfectly innocent babe about it. Whatever preparation had been made had been made by others. He had only furnished some cost slips, and so forth, on the production of sugar beets. Yet, while he was testifying and evading the questions, as my friend from Wisconsin will show to the Senate when he reads the testimony, there sat there a man by the name of Fox, who was another examiner, and Fox had been working with Dean Turner and with Mr. Brossard in the preparation of

this report of Burgess and Marvin; and then they called Mr. Fox before the select committee to get his version of it, and Fox contradicted Mr. Brossard in toto.

Oh, he was reluctant about answering the questions about the preparation of the report; but he stated in his testimony that Mr. Brossard helped to prepare that report; that Mr. Brossard and Dean Turner and himself had sat up nights and days in the preparation of it and getting it ready. That was the kind not only of evasiveness but of misstatement of facts that we encountered. It was shown further—Mr. Fox was then an examiner or an expert up there—that Mr. Brossard called Fox to his office numerous times afterward and wanted him to refresh Brossard's memory with reference to his testimony before the select committee. When Brossard was pressed as to reason, he said it was because he had read in the papers that this select committee was going to resume consideration of the question, and he wanted to talk it over with Mr. Fox to see if they understood it alike. That is the kind of man whose name President Hoover sends here, over notice and warning, to serve on an impartial Tariff Commission to try to ascertain facts with reference not only to sugar but to everything else!

How can anybody have respect for a commission if it is going to be filled with such cogs as that? They can not have respect for it. How can the American people, who might be taxed in heavy costs of sugar, have any faith in a commission upon which sits a man who has already expressed himself on the subject and shown before a committee not only that he misstated the facts but an evasiveness that was marked and conspicuous?

Those are the facts with reference to this man; and the Senate can do nothing else but to turn him down, Mr. President.

Personally, I like Mr. Brossard. I never knew him very well. I have come in contact with him. He is a pleasing fellow; but the Senate has a function to perform, and we can not put a man of that character on the commission.

I pass by this report that Mr. Brossard got up while we were here in this heated tariff controversy and sent it out to the press—the statement for which he assumed all responsibility before the Finance Committee, wherein he said that agriculture would be greatly benefited by the passage of this act. No; he did not put in the word "greatly," he said it would be benefited. Mr. Conrad inserted the word "greatly," and I presume for that Mr. Conrad got an increase of salary as publicity man up in the Tariff Commission. Mr. Brossard injected himself throughout this tariff controversy in trying to mold public opinion in favor of what the distinguished Senator from Utah [Mr. SMOOT] and his former colleague from Pennsylvania, Mr. Grundy—not Senator REED, who was away at that time—were trying to do. He made several speeches—they are in the RECORD; I shall not quote from them—trying to show not only that agriculture was going to be greatly benefited but he made one speech on foreign relations in which he said there were no more protests filed on this tariff bill than on every other tariff bill that has been considered. There had been 29, I think he said, but they were just about of the same character as those that are received in all these tariff discussions. He had possibly read the speech that my friend from Utah had made on the floor of the Senate, and he was just following him and saying, "Me, too."

I do not blame Mr. Brossard for feeling kindly to the distinguished Senator from Utah, because it is due more to the Senator from Utah than anyone else that he received his appointment on the Tariff Commission. He was proud of the fact—that is one thing he did not evade—that when he was suggested as a member of the Tariff Commission he had the indorsement of the distinguished Senator from Utah [Mr. SMOOT]. That is nothing against him, of course; but when we take into consideration that fact, and the fact, too, that Mr. Brossard helped to draw the sugar report for the minority which sought to carry the sugar rate up pretty high, and then his evasiveness about the matter I have stated; when we dovetail all these circumstances in they make him pretty unfit for this particular place.



I have no desire to prolong this discussion. I have stated succinctly and briefly my reasons for opposing the confirmation of Mr. Brossard. The Senate will reflect credit upon itself if it puts its stamp of disapproval on this nomination, because if he is confirmed and made a member of the Tariff Commission, the country will know of his fixed, formed, and expressed opinion as to this particular subject, they will know of his evasiveness before the select committee of the Senate, and they will know that he is unfitted to occupy this particular place on the Tariff Commission.

Mr. LA FOLLETTE. Mr. President, I am opposed to the confirmation of Mr. Edgar B. Brossard to be a member of the Tariff Commission.

As the Senate knows, there was appointed a select committee to investigate the Tariff Commission, pursuant to Senate Resolution 162 of the Sixty-ninth Congress. The members of that committee were JOSEPH T. ROBINSON, of Arkansas, chairman; James W. Wadsworth, jr., of New York; DAVID A. REED, of Pennsylvania; myself; and Senator Bruce, of Maryland.

The committee made an exhaustive investigation, the hearings, with the exhibits and other data, comprises a volume of 1,461 pages. I think it is fair to say that the committee made a very thorough investigation of the activities of the Tariff Commission. It went carefully into numerous controversies which had grown up in the commission, took testimony of all former commissioners, the then commissioners, and, pursuant to the resolution, finally submitted a report to the Senate.

It will be remembered that there had developed a very far-reaching and bitter controversy concerning the Tariff Commission's report on the sugar investigation. As a result of that controversy the senior Senator from Nebraska [Mr. NORRIS] delivered a speech in the Senate, and it was following that address, and the facts disclosed in it, principally concerning the sugar controversy, that the Senate decided upon an investigation of the Tariff Commission.

I sketch in this background, Mr. President, because I think it is important that the Senate should bear in mind that the controversy over the sugar report had reached such proportions and was of such a nature that it throws light on what I consider the disingenuousness of Mr. Brossard's testimony before the select committee.

I may say that he was called after the committee had taken the testimony of other commissioners who were involved in the controversy.

I say for the convenience of Senators that in reading from this testimony I shall refer to the page numbers of the hearings held before the Finance Committee in which the testimony of the select committee concerning the relation of Mr. Brossard and the sugar report was incorporated and made a part of the Finance Committee's recent hearings.

On June 30, 1926, Mr. Brossard appeared before the select committee. The excerpt of the testimony from which I am about to read will be found on page 196 of the hearings before the Finance Committee just referred to:

Chairman ROBINSON. Did you participate in the sugar report?

Mr. BROSSARD. No.

Chairman ROBINSON. I do not mean the sugar-beet report. I mean the sugar report proper.

Mr. BROSSARD. Did I participate in the sugar report?

Chairman ROBINSON. Yes.

Mr. BROSSARD. I considered some of the data, yes, sir, with respect to the cost of production of sugar beets.

Continuing on the succeeding page:

Chairman ROBINSON. Which report did you concur in, the majority or the minority report, in your opinion or conclusion? You were associated with the preparation of the report, were you not, or at least with the summarization of the data?

Mr. BROSSARD. No, sir. I did not have anything to do with it.

Chairman ROBINSON. What was your relationship to the sugar report?

Mr. BROSSARD. I was connected with the staff at the time the sugar report was under consideration as agricultural economist and had charge of the sugar-beet investigation. At numerous times the commissioners severally and jointly requested data on the cost of production of sugar beets. I think there are something like 21 or 22 memoranda that I submitted to the commission on the cost of production of sugar beets, most of which were sub-

mitted to them during the time that they were considering the sugar investigation.

In addition to that, I prepared some tabular material at the request of the different members of the commission. I prepared a table on investments for Mr. Lewis. I prepared a table showing the relationship of the price per ton of sugar beets to the acreage planted the following year in sugar beets. That was for Commissioner Lewis. I prepared for Chairman Marvin and Commissioner Burgess a summary of the 2-year average costs and a summary of the 3-year average costs, and submitted a large table showing for the different States the average cost of production of sugar beets in each State and in the United States per pound of sugar extracted from beets. Then there has been other material. If you want these, they might go in the record.

Chairman ROBINSON. I do not know of any occasion for putting them in the record.

Did you form or express any opinion as to which of the reports in the sugar case was correct—the majority or minority report?

Mr. BROSSARD. I may say now that I have never read the report of Commissioners Culbertson, Lewis, and Costigan. I have not to this day read it. I do not know the exact points of view that were taken there. I have not had a copy made available to me.

Chairman ROBINSON. Did you read the other report?

Mr. BROSSARD. I have never read the other report; no, sir. I have not had it. I have never read it, but I know something about the problems, because I talked to the experts on the staff of the commission.

On July 1, the day following, Mr. Brossard was continuing his testimony. This will be found on page 232 of the Finance Committee hearings. Bear in mind the controversial character of this sugar report, the charges and countercharges which had been made concerning it:

Senator LA FOLLETTE. Mr. Brossard, did you see any of the drafts of the minority opinion in the sugar report made under section 315 at any time before it was transmitted to the President?

Mr. BROSSARD. The drafts of the completed report?

Senator LA FOLLETTE. The drafts of the minority opinion.

Mr. BROSSARD. I saw parts of it; yes, sir.

Senator LA FOLLETTE. What parts did you see?

Mr. BROSSARD. Well, I do not remember just now. I submitted some statements to the chairman and to Commissioner Burgess, which I offered for the record the other day, Senator LA FOLLETTE.

Senator LA FOLLETTE. Will you read my question?

(The reporter read as follows:)

"Senator LA FOLLETTE. Mr. Brossard, did you see any of the drafts of the minority opinion in the sugar report made under section 315 at any time before it was transmitted to the President?"

Mark this, in view of the subsequent testimony which I shall call to the attention of the Senate:

Mr. BROSSARD. I saw the drafts and knew what they were, Senator LA FOLLETTE, but I did not read the completed final report. I saw it lying on the chairman's desk, and I do not know but what I saw it—I think that is the only place I ever saw the completed draft of the report.

Senator LA FOLLETTE. Did you see any sections or paragraphs of the minority opinion of the sugar report referred to in my preceding question?

Mr. BROSSARD. Identically, I am not sure that I did; no, sir—the identical paragraphs. I can not say.

Senator LA FOLLETTE. Well, did you see any of the tentative drafts of sections or paragraphs before they were incorporated in the minority opinion which was transmitted to the President?

Mr. BROSSARD. I saw, Senator LA FOLLETTE, material which had been submitted as tentative to go in the report which was submitted, but I am not sure whether it was submitted and whether it was included in the final report of the minority.

Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion with regard to its content?

Mr. BROSSARD. I was asked to submit certain specific tables with respect to it; yes, Senator. I had instructions, as a member of the staff, to prepare for Chairman Marvin and for Commissioner Burgess certain tables, which I offered in evidence the other day.

Senator LA FOLLETTE. I am not talking about those tables. I am talking about the content of the minority opinion.

Mr. BROSSARD. Will you read the question again, please? I did not get it.

"Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion with regard to its content?"

Mr. BROSSARD. Is my answer responsive?

Senator LA FOLLETTE. I do not think it is.

Mark this:

Mr. BROSSARD. Well, I did not discuss the question of what should go in either report, if that is what you are asking about. I never did go before those people and tell them what I thought ought to be in that report; no, sir.

Senator LA FOLLETTE. I did not ask you if you went before them. I asked you if you were consulted, either directly or indirectly, by either one or all of the commissioners who signed the minority opinion, with regard to its contents.



Mr. BROSSARD. No, sir. I was not consulted about the content of the minority opinion by either of the commissioners.

Senator LA FOLLETTE. You were not?

Mr. BROSSARD. Not that I remember of.

Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion in the sugar report, in regard to the phraseology of any part or parts of the draft before it was submitted to the President?

Mr. BROSSARD. No, sir.

Senator LA FOLLETTE. With regard to the halibut case, were Commissioners Marvin and Dennis instructed by the commission to hold a hearing on behalf of the whole commission?

Mr. BROSSARD. Yes, sir, Senator; and Commissioner Costigan was also included in that motion but found that he was unable to go; but I think subsequently he did participate in the investigation, nevertheless.

Senator LA FOLLETTE. Was that course followed in the taximeter and print-roller cases?

Mr. BROSSARD. No, sir; but let me state that every word of testimony, Senator—

Senator LA FOLLETTE. I understand that. I have heard your testimony.

Mr. BROSSARD. In all the investigations was available to all commissioners, and we read it all.

Senator LA FOLLETTE. I understand that. I think that is all. Chairman ROBINSON. Did you, yourself, dictate any portion of the minority sugar report?

Mr. BROSSARD. I did not.

Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?

Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator.

I submit to any lawyer in this body that from a reading of that testimony the responses of Mr. Brossard bear internal evidence of his evasiveness. In his replies to my questions it is apparent that it was difficult to pin him down, and that finally when he was pinned down he said in response to a question by me, and I repeat it for emphasis:

Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?

Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator.

Mr. President, the committee shortly after that time took a recess and did not resume its investigation, as I remember it, until the Congress reconvened in December.

I next wish to refer to the testimony of Mr. Fox, who at the time the sugar report was prepared was one of the economists on the staff of the commission. I am reading from the testimony taken by the select committee on January 10, 1927, as appears on page 253 of the Finance Committee hearings:

Senator LA FOLLETTE. This committee, before the summer adjournment, heard a great deal of testimony about the sugar report which was originally submitted to the President on August 1, 1924. Other material was sent to the President in response to further requests from him in the fall of 1924. Were you connected with the commission during the period of the preparation of the report for the President?

Mr. Fox. The sugar report?

Senator LA FOLLETTE. Yes.

Mr. Fox. Yes, sir; I was.

Senator LA FOLLETTE. What were your duties at that time?

Mr. Fox. Those of an economist. I also served a considerable portion of that time as investigator. I was sent to Hawaii in connection with sugar. I was also sent to New York, and assisted in getting the Cuban data; also getting the sugar-refining data. At such times, I suppose, technically, by the rules of the commission, I was under the chief investigator.

Senator LA FOLLETTE. Did you take part in the preparation of any portion of the commission's report to the President?

Mr. Fox. I did.

Senator LA FOLLETTE. There were two reports submitted, one on behalf of the commission prepared by Mr. Lewis, Mr. Costigan, and Mr. Culbertson, and another report which has come to be known as the minority report, prepared by Mr. Marvin and Mr. Burgess. Do you know how those respective reports were prepared or how either one of them was prepared?

Mr. Fox. I know nothing about how the Costigan-Culbertson-Lewis report was prepared. I know something about how the other report was prepared.

Senator LA FOLLETTE. Will you state your knowledge as to what occurred, with particular reference to the members of the staff who actually participated in the preparation of that report?

Mr. Fox. I should like to make it clear that all reports of the commission originate, with few exceptions, with the staff, prepared either in the commodity division or by the commodity expert assisted by the economists, perhaps with the assistance of many men. They are reviewed, many times revised, at times entirely

rewritten by the advisory board. Then they go to the commission. The commission having, of course, final authority, makes those determinative decisions which it deems necessary; and it then becomes, of course, their report. Just as a report is sometimes called the advisory board's report before it goes to the commission, simply because the advisory board has authority to make changes, so, after it leaves the advisory board and goes to the commission, the commission has authority to decide what changes are to be made, after which it becomes a commission report.

As I recall, during the sugar investigation the sugar report was not referred to the advisory board. I believe it is one of the few, if not the only instance, where that was done. I am not certain about that, but it was one instance. While the report prepared by the chief of the sugar division was being considered by the commission with certain experts sitting in with the commission, various memoranda were being prepared. I was very busy, because I was interested in the sugar investigation. I participated in the field work. I prepared a number of memoranda. My associate, Doctor Mixer, I believe, prepared some. Dean Turner prepared many. Doctor Brossard, I believe, prepared some. This was going on for some time. Finally it was decided to prepare a draft of the final report.

That refers, of course, to the Marvin-Burgess report, the so-called minority report.

Mr. REED. Mr. President, will the Senator yield?

Mr. LA FOLLETTE. Certainly.

Mr. REED. Was it not explained that that meant the advisory board's report to the commission and not the report of the commission itself?

Mr. LA FOLLETTE. I do not so understand. If the Senator will follow me I think it will develop that it was not. Mr. Fox continued:

I believe that decision was reached sometime around July 22. I imagine it was at the time when the consideration of the report by the commission was nearing completion. The matter was discussed by my chief, Chief Economist Dean Turner, and myself and some others, and we decided to start work that day. We worked along from that time until the report was submitted. There were a number of drafts made, and the report took the same course as other reports—for instance, as the butter report except that the butter report went through the advisory board.

Senator LA FOLLETTE. You say that about the 22d of July it was decided to prepare a report?

Mr. Fox. Oh, I do not know the exact date.

Senator LA FOLLETTE. But approximately some time in July it was decided to prepare a final draft?

Mr. Fox. The draft. We had been working on all sorts of memoranda.

Senator LA FOLLETTE. You say that Dean Turner and Doctor Mixer—

Mr. Fox. I believe Doctor Mixer prepared some.

Senator LA FOLLETTE. Were there any others associated with you in this work?

Mr. Fox. Well, Doctor Brossard prepared some; Dean Turner and myself. We are not associated, in a way. I was working independently. I was interested, for instance, in the years to be used. I was interested in certain tests that the chief of the sugar division was using upon the early years of the sugar data. I was interested in certain other phases. What Doctor Mixer was working on I do not know. Then, as I recall it, Doctor Brossard worked on memoranda, and, I believe, for a short period before we started Doctor Brossard and Dean Turner worked together.

Senator LA FOLLETTE. At any time during the preparation of this draft report were there any conferences held by those who were working specifically on it?

Mr. Fox. Upon that date when we began working on the draft, then, of course, we went into conference. We organized and went to it—a period that I would not want to go through again. When we started out I made arrangements for a room, because of possible interruptions in the chief economist's office, and the chairman was kind enough to let us use his small anteroom. We worked there during the day and at night we worked in the office of the chief economist.

Senator LA FOLLETTE. Have you in your possession or are there available to you copies of any material contributed to the report by you or Doctor Brossard or Doctor Turner or any other member of the commission's staff?

Mr. Fox. I have drafts which I believe were contributed, but it was a very hectic period, and we did not stand upon ceremony. At the present time, when a report is prepared, it is usually addressed to the commission or the advisory board or someone else from so-and-so, and it is signed, but, during those hectic days those formalities were not observed.

I have a number of memoranda, as I look through my file, that I believe I prepared; one that Doctor Mixer prepared. I have one, I believe, that Doctor Brossard prepared; one that Doctor Brossard and Dean Turner prepared; and I have a lot of miscellaneous material.

Senator LA FOLLETTE. Have you those papers with you?

Mr. Fox. But, may I say this: It would be impossible to trace anyone's contribution, because when he began the drafting of the report, we drew up a rough draft, taking something here, something there, using all of the available information. And then Dean



Turner, who is a very, very careful man, would dictate. As sections were completed they would be reviewed and revised many, many times, so that, even at the time when the first draft was ready, the language was different. Some of the ideas were modified. It was then practically impossible to trace the contribution of any one individual.

Senator LA FOLLETTE. I understand, but you have just stated in your previous answer that you had certain data or memoranda which you believe were prepared by different individuals.

Mr. Fox. But those I just—

Senator LA FOLLETTE. Will you produce those for the committee, please?

Mr. Fox. Here is one that is marked "J. R. T." All of these papers were not kept.

Chairman ROBINSON. Who is "J. R. T."?

Mr. Fox. Dean Turner.

Senator LA FOLLETTE. Let us mark that as an exhibit. I do not think it needs to be included in the hearings.

Mr. Fox. Here is something that is in Dean Turner's handwriting. I see Doctor Mixer has three words on here.

Here is one marked "A. M. F." That is mine.

Senator LA FOLLETTE. Mark that as an exhibit.

Mr. Fox. Here is one that has no name on it, but written at the top is "Doctor Mixer."

Senator LA FOLLETTE. Let that be filed as an exhibit.

Mr. Fox. Here is one on the basis of costs. Who prepared it I do not know. I see some one's handwriting marked "Basis of costs." That is written by Mrs. Garland. I notice two words by Dean Turner.

Senator LA FOLLETTE. Let that be marked as an exhibit.

Have you any idea who prepared that?

Mr. Fox. You see we all had been preparing memoranda for a period of a month or two months. The ideas were supplied by many people. They were often rewritten.

Here is one of mine, "Memorandum on sugar report."

Senator LA FOLLETTE. File that as an exhibit.

Mr. Fox. Here is one of May 29, 1924, "Comments on sugar report." That refers to the report written by Doctor Bernhardt.

Here is another one of mine, "Relative position of Cuban sugar companies. Comments on tests to establish the representative character of the few companies for which data are available for the early years," under date of July 7, 1924.

Senator LA FOLLETTE. File that as an exhibit, please.

Mr. Fox. Here is one, "Raw or refined basis." I think that was prepared jointly by Dean Turner and myself one Sunday.

Here is one, "Why sugar beets compared?" It has at the top in Mrs. Garland's handwriting, "Doctor Brossard's statement," and contains in Dean Turner's handwriting a number of comments.

Senator LA FOLLETTE. Those portions in pencil are in Dean Turner's handwriting?

Mr. Fox. Yes, sir.

Senator LA FOLLETTE. File that as an exhibit.

Mr. Fox. Here is one on "Advantages and disadvantages." This was prepared, I believe, jointly by Dean Turner and myself on a Sunday when I was writing it down in long hand. This is not signed.

Senator LA FOLLETTE. Let it be filed as an exhibit.

Mr. Fox. Here is another one that is not signed, but it has "J. R. T." and "E. B. B.," written by Mrs. Garland.

Chairman ROBINSON. To whom do those initials refer?

Mr. Fox. John R. Turner and E. B. Brossard. It has in pencil corrections made in Dean Turner's handwriting.

Chairman ROBINSON. Let it be filed as an exhibit.

Senator LA FOLLETTE. You said that related to advantages and disadvantages.

Mr. Fox. Not this one; no, sir.

Senator LA FOLLETTE. Pardon me. What is the subject matter of that memorandum?

Mr. Fox. It deals first with the fact that the advisory board was not consulted in the consideration of the sugar report, and sets forth the method of procedure, the usual procedure, and the reasons that a report which does not follow such procedure would be unsatisfactory. It also deals with the fact that the commission was not properly balanced for the consideration of the report by reason of the withdrawal of Commissioner Glassie from consideration of the report. It has a section here on sugar beets. It has another section on prices, and then the balance deals with the inadequacy of the early data.

Senator LA FOLLETTE. From your familiarity with the procedure and the general making of this report—was that memorandum to which you have just referred intended to be submitted for consideration to be included in the report?

Mr. Fox. I could not say, sir. I suppose so. I could not be definite.

Senator LA FOLLETTE. Have you any other papers there?

Mr. Fox. I have plenty of papers here.

Senator LA FOLLETTE. You understand to what I refer?

Mr. Fox. Here are some work sheets. Here are some tables that I notice in Mr. Brossard's handwriting. Here is a table made of costs by States, "E. B. B."

Senator LA FOLLETTE. File it as an exhibit.

Mr. Fox. Here is another table and written on the top of it is "Brossard." I think that is my handwriting.

Here are some tables in my handwriting. Some tables, I believe, that finally went into the report; costs of production of sugar.

Senator LA FOLLETTE. File that as an exhibit.

Mr. Fox. I have here what I believe is a copy of the first draft of a report under date of July 26, 1924.

Chairman ROBINSON. By whom was that prepared?

Mr. Fox. That was prepared by the staff members—Doctor Turner, Doctor Brossard, and myself—sitting in conference.

I ask Senators to compare Mr. Fox's testimony with Mr. Brossard's direct examination to which I have referred in my remarks. Just to refresh the memory of Senators on this subject I want to read again, after an extended examination, what I submit the testimony shows was evasiveness on the part of the witness:

Chairman ROBINSON. Did you yourself dictate any portion of the minority sugar report?

Mr. BROSSARD. I did not.

Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?

Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator.

Compare that with the statement made subsequently by Mr. Fox:

Mr. Fox. I have here what I believe is a copy of the first draft of a report under date of July 26, 1924.

Chairman ROBINSON. By whom was that prepared?

Mr. Fox. That was prepared by the staff members—Doctor Turner, Doctor Brossard, and myself—sitting in conference.

Chairman ROBINSON. Does that appear on the face of the memorandum or do you state that from memory?

Mr. Fox. I state that from memory.

Senator LA FOLLETTE. That is the first draft of a report of the majority or the minority, which?

Mr. Fox. I do not like, personally, the terms "minority" and "majority."

Chairman ROBINSON. Well, then define it in your own way. You know there were two reports. Please make clear which report it was.

Mr. Fox. The Marvin-Burgess report.

Senator LA FOLLETTE. Let that be marked as an exhibit, please.

(The document referred to was marked "Exhibit 16" and filed with the committee. See p. 1122.)

Senator LA FOLLETTE. You made reference to another draft.

Mr. Fox. I have here a draft of July 30, 1924.

Senator LA FOLLETTE. By whom was that prepared?

Mr. Fox. By the same group, incorporating further suggestions.

Senator LA FOLLETTE. By whom?

Mr. Fox. By the same group—Dean Turner, Doctor Brossard, and myself.

Senator LA FOLLETTE. Let that be marked as an exhibit.

Then further exhibits were placed in the record. I read next from page 260:

Chairman ROBINSON. May I ask a question to be clear? What was the object of the preparation of these various memoranda to which you are referring? At whose direction were they prepared and what use was made of them?

Mr. Fox. The memoranda that I prepared were made at the direction of the chief economist, some of them, and some of them were made on my own initiative. Others I could not say. It is usual as reports are going through now—most certainly I, as chief of the division, request the preparation of such reports.

Chairman ROBINSON. What was the object of them? For what purpose were they prepared?

Mr. Fox. Those that I prepared were prepared because of my association with the sugar investigation and my keen interest in the various phases of the subject which were being considered, such as the years to be considered, the question of using early data, and others.

Chairman ROBINSON. What was the object of those prepared by Doctor Brossard and other members of the staff?

Mr. Fox. I could not say, sir.

Chairman ROBINSON. Did this matter of the preparation of these memoranda take the same or similar course as that which is taken in all important cases, or was it an unusual course?

Mr. Fox. I believe the same course as is being taken.

Senator LA FOLLETTE. These draft reports, for instance, were not submitted to the whole commission?

Mr. Fox. Oh, the draft reports—I understood the chairman—

Chairman ROBINSON. No. I was not referring to the draft reports alone. I was referring to the various memoranda, but what I am getting at is whether this was in pursuit of the established custom of the commission or whether there was something unusual about the procedure of various members of the staff preparing memoranda, some of it, after the report had been made.

Mr. Fox. This was before the report was made.

Chairman ROBINSON. Well, there are memoranda here which you said Doctor Brossard and others prepared which were evidently made after the report, because it says:

"The sugar report has not been so conducted as to lay before the President a full and fair presentation of the facts and principles involved."

Mr. Fox. I believe that was prepared while the report—

That is the majority report—

was being considered by the commission.



Mr. President, on page 261, I asked this question:

Senator LA FOLLETTE. As a matter of fact, Mr. Fox, these drafts of opinion, when prepared, were they not for the consideration and the assistance of Mr. Marvin and Mr. Burgess in the preparation of their report?

Mr. Fox. I can only speak for myself. When I prepared those memoranda I had no idea in the world what use was going to be made of them. All I knew was that I was one who claimed to be and hoped he was scientific, and who had had very close touch with the actual field work of the investigation, and who thought he knew some of the problems of the investigation, who was spending his time studying those problems intimately to make certain of his own position. What use was going to be made, if any, of them I could not say.

Senator LA FOLLETTE. But at this time in July, when you say it was decided to prepare the report, there was a tremendous amount of pressure evidently on those who were interested in it, and just tell the committee what was done, for instance, with the data that you prepared? To whom did you turn that over when you had finished with it? You said you were working nights and days on this material. What was done with it?

Mr. Fox. Nothing was done with it until the latter part of July, when it was decided to prepare the draft or what might become the draft of the Marvin-Burgess report.

Senator LA FOLLETTE. Exactly.

Mr. Fox. We organized, and when I say that—

Senator LA FOLLETTE (interposing). You say "we organized." Who organized?

Mr. Fox. Dean Turner and myself.

Senator LA FOLLETTE. Anyone else?

Mr. Fox. Doctor Brossard, too, was present.

Senator LA FOLLETTE. You say that you decided to organize to get out this report?

Mr. Fox. Yes.

Senator LA FOLLETTE. Now, you were not working on something that you did not know what was going to be done with, were you?

Mr. Fox. That is happening all the time.

Senator LA FOLLETTE. No; but you say that you organized to get out the draft of this report?

Mr. Fox. Oh, then we knew.

Senator LA FOLLETTE. For whom was it intended?

Mr. Fox. That draft? Chairman Marvin and Mr. Burgess, to serve as the draft.

Senator LA FOLLETTE. So that is the basis of their report?

Mr. Fox. Yes.

Senator LA FOLLETTE. That is correct, isn't it?

Mr. Fox. Yes; and we used all of these memoranda prepared; that is, all I prepared. I said honestly I had no idea what use might be made of them. I just stated each of the studies that I was interested in, and then we arranged during that conference, Dean Turner was to do all of the dictating, I examined all of the material available prepared by the various men, sorted it out, arranged it in logical order, examined it to see where it fitted in—I acted as sort of a handy man.

Senator LA FOLLETTE. And what was Doctor Brossard's work?

Mr. Fox. I do not recall that any special function was assigned to him. I personally took care of everything that went into that report.

But toward the end I believe Dean Turner and I requested Doctor Brossard to check the figures, because at that time I was getting to a point where I was not as sure of myself as I had been at the beginning.

Chairman ROBINSON. What does he mean by that?

Mr. Fox. I mean that when we prepared this draft Dean Turner did the dictating and I took the responsibility of every figure that went in there, whenever a figure had to appear in a table.

Senator LA FOLLETTE. And you say that Doctor Brossard was present during the preparation of this draft?

Mr. Fox. With certain exceptions. He was not there some evenings. He was not there the first evening. He was not there another evening. He was not there Sunday, and then the very last night we worked pretty late.

Senator LA FOLLETTE. How late did you work?

Mr. Fox. Dean Turner, Doctor Brossard, and Mrs. Garland left at 3.30.

That is 3.30 o'clock in the morning. Yet Mr. Brossard testified that he had nothing to do with the preparation of this report.

I stayed all night, tying up the loose ends, getting ready for the last spurt in the morning, and personally preparing all the charts to go into the report.

Senator LA FOLLETTE. Did Doctor Brossard contribute to the preparation of this draft report?

I want to call attention to the fact that at the time Mr. Fox was testifying he was an economist on the commission, and, in the meantime, since all of these events transpired, Mr. Brossard had been elevated to a position as one of the commissioners, and therefore Mr. Fox was his subordinate. I ask Senators to bear that in mind in judging this testimony of Mr. Fox, because it shows the evident reluctance of a subordinate to testify against a superior officer.

Senator LA FOLLETTE. Did Doctor Brossard contribute to the preparation of this draft report?

Mr. Fox. It is difficult to answer that.

Senator LA FOLLETTE. There were three men there, all of you working on this thing, and each one must have known what the other was doing.

Mr. Fox. Oh, yes. We used all the ideas that were available.

Senator LA FOLLETTE. Then you can answer my question, can't you, Mr. Fox?

Mr. Fox. I would not be able to identify what Doctor Brossard did.

Senator LA FOLLETTE. I am not asking you to identify it; I am asking you the question as to whether or not he contributed to the preparation of this draft report.

Mr. Fox. In a measure, I suppose.

Senator LA FOLLETTE. Can you state how?

Mr. Fox. He had prepared such memoranda as we all did. We tried to use as much of that as we could. His contribution, as I recall it—his definite contribution, as I recall it—arose from the fact that as we were proceeding with the report Dean Turner had assigned to one of the economists, Doctor Mixer, the preparation of a statement setting forth the economic bases for comparing Cuban sugar with United States beets, and when we came to that point and examined Doctor Mixer's statement, as I recall it, it appeared that it would not fit into the report or the draft being prepared. I believe that was a Thursday night—I would not be certain. We broke up rather early that evening, and the next day we decided perhaps the best thing to do was to have Doctor Brossard, because of his familiarity with the subject of sugar beets, prepare a statement setting forth every reason that he could think of from his own memorandum and elsewhere, the why of beet sugar—why sugar beets or beet sugar should be used in the comparison. I believe that was the reason that statement was prepared to which I referred here, that 4-page statement. Then we went through and we picked out, you will notice in Dean Turner's handwriting, such ideas as it seemed would fit into the report.

Senator LA FOLLETTE. Are there any records showing who worked upon this report, either in or out of office hours?

Mr. Fox. Of course, in office hours the only thing I can think of would be the monthly reports. Each division submits to the Secretary each month a statement of the work done by each member. I have in the last few weeks a statement of work done by my own members each week. In addition to that, when we enter the building outside of office hours, we all sign up.

Senator LA FOLLETTE. That is, you sign as you come in and go out?

Mr. Fox. Yes. No; we sign as we go in, recording the time, and then the time we leave.

Senator LA FOLLETTE. What do these records with regard to hours outside of the regular office hours show at this period?

Mr. Fox. Why, I suppose the record itself, the register, would show.

Mr. President, on the same day, as appears on page 264 of the reprint of the select committee's hearings by the Finance Committee, I asked Mr. Fox the following question:

Have you any reason to suppose that your files, with copies of papers and data and memoranda prepared for this minority draft report for Mr. Marvin and Mr. Burgess, have ever been tampered with?

Mr. Fox. No.

Senator LA FOLLETTE. Or that anyone has ever attempted to tamper with them?

Mr. Fox. Not to my knowledge.

Senator LA FOLLETTE. Has there ever been any effort made to find out through your office exactly what your records or files showed with regard to the preparation of the data for this draft report?

Mr. Fox. Our files in the economic division are often consulted. Senator LA FOLLETTE. Has any particular effort been made to ascertain what your files showed with regard to the preparation of data for this draft report?

Mr. Fox. Yes. Doctor Brossard has called for the files, but that is not anything unusual. I think Mr. Marvin has looked at the files.

Senator LA FOLLETTE. Well, I asked you whether or not the inquiry had been made with particular reference to the data in the files concerning the draft report.

Mr. Fox. Doctor Brossard, as I recall it—if my memory is correct—asked to see what papers in the files showed drafts that Doctor Brossard had worked upon.

This, of course, was subsequent to Mr. Brossard's testimony that he had had no part in the preparation of the sugar report.

Senator LA FOLLETTE. When was that request made, to the best of your recollection?

Mr. Fox. I think Doctor Brossard's request was made last week. I believe it was Monday he had the files for a very short time—very short. And may I explain, because of the fact that these files are called for so many times by people and I have found that some men, some men in my division, are rather careless about the documents, and because of the importance of the documents we have devised a scheme in our division whereby every



single document in the report is documented and there is a number which appears upon it, so that when anyone takes the files we just keep this [the folder] in the office and let them have that [indicating the contents]. That is the rule when I take the material out of the files; for the commissioner or any member of the staff, there is the same rule, in order to make certain where the material is. We have had a number of documents in other connections mislaid.

Senator LA FOLLETTE. When this request was made by Doctor Brossard, did he make the request of you?

Mr. Fox. Yes; to me personally.

Senator LA FOLLETTE. Will you state to the best of your recollection the conversation which took place?

Mr. Fox. I believe he said that he understood or that he thought perhaps the Senate hearings might be reopened, and that he might go back on the stand, and he wanted to be certain of his connection or of his participation; that he was very anxious to correct any misstatements he might have made; that he did not want to take the credit for anything that he did not do; that he was ready to take the responsibility and he wanted to see the files to see just what he had done, as far as my files would disclose.

Senator WADSWORTH. It was to refresh his memory?

Mr. Fox. That is the impression I had. That is the understanding I had; yes, Senator.

Senator LA FOLLETTE. Did Commissioner Marvin ever make any request for the files showing the data used in the preparation of this draft report?

Mr. Fox. As I recall it, he came to my office and asked for the sugar files and looked them over right in my outer office.

Senator LA FOLLETTE. To the best of your recollection, when did that occur?

Mr. Fox. It was one of the days Doctor Brossard testified, perhaps the last day. That was, I suppose, on the 1st or 2d or 3d day of July.

Chairman ROBINSON. Were you present before the committee when Mr. Brossard testified with respect to his connection with the sugar report?

I have already brought that testimony to the attention of the Senate.

Mr. Fox. I was.

Chairman ROBINSON. Did you hear his testimony?

Mr. Fox. I did.

Chairman ROBINSON. How many times have you discussed his testimony or any phase of it, particularly his statement that he had nothing to do with the preparation of the Marvin-Burgess sugar report, since his testimony?

Mr. Fox. With whom?

Chairman ROBINSON. Mr. Brossard.

Mr. Fox. On a few occasions.

Chairman ROBINSON. How many?

Mr. Fox. Three or four, or half a dozen.

Chairman ROBINSON. When was the first time, if you recall?

Mr. Fox. I believe it was some time in September, 1926. It was after my return from the field. I was in the field in connection with the milk and cream investigation.

Chairman ROBINSON. When did you get away from Washington prior to that conversation?

Mr. Fox. I left Washington, I believe, July 3 or 4—July 4, I believe.

I point out that that was shortly after Mr. Brossard had testified before the committee that he had nothing to do with the preparation of the Marvin-Burgess report except as an agricultural expert on the staff of the commission.

Chairman ROBINSON. The first time that Mr. Brossard talked to you about his testimony before this committee was in September, when you returned from the field?

Mr. Fox. As I recall it.

Chairman ROBINSON. What did he say to you then?

Mr. Fox. He asked me if I heard his testimony and what were my reactions toward it.

Chairman ROBINSON. All right. What did you tell him?

Mr. Fox. I was rather reluctant to discuss it.

Chairman ROBINSON. Why? [After a pause.] Why are you so long in answering? Why don't you go ahead and answer my question?

Mr. Fox. It was not a subject matter that I felt free to discuss.

Chairman ROBINSON. Why?

Mr. Fox. Well, as I told you that first time, it was a matter—it involved a matter of opinion. He probably had certain things in mind. In other words, when he answered those questions he answered with certain interpretations.

Chairman ROBINSON. Notwithstanding your reluctance, did you talk to him about it?

Mr. Fox. I did. He stated that he had no purpose but to tell the truth; that if he had the opportunity he would have told everything about his sugar story.

Chairman ROBINSON. Did he indicate or did you infer from what he said that he was denied the opportunity to tell all about what he had to do with the writing of the draft of the sugar report? You knew, as a matter of fact, when you heard him testify, that he had assisted in the preparation of the draft, didn't you?

Mr. Fox. In—that is a relative thing.

Chairman ROBINSON. No; it is not a relative thing. It is a direct question, and you can answer it yes or no.

Mr. Fox. In a measure; yes.

Chairman ROBINSON. Now, you can explain what you mean by "in a measure."

Mr. Fox. Well, I attempted to set forth as fully as I knew how just what was done. We started work on the 22d. We organized.

Chairman ROBINSON. Whom do you mean by "we"?

Mr. Fox. Dean Turner was to do all of the dictating. I examined all the material which was available, the memoranda, sorted out the ideas, arranged it in logical order, saw that things were running smoothly, and acted as handy man, and at most of these meetings, except those on certain evenings and on Sunday, Doctor Brossard was present. Sometimes, when we came to a difficult part, we all, in spite of the fact that Dean Turner did the dictating, we all took a hand in it, and, of course, the official version of it was handled by Dean Turner, because he was the chief of the division.

Chairman ROBINSON. Can you state approximately how many meetings you held in the preparation of that first draft of the Marvin-Burgess report?

Mr. Fox. We started, as I recall it, Tuesday afternoon. That evening Dean Turner and Mrs. Garland and myself worked. Tuesday we were at it morning and afternoon. Only one worked in the evening.

Senator WADSWORTH. You do not mean Tuesday. Don't you mean Wednesday?

Mr. Fox. Wednesday, the next day.

Chairman ROBINSON. Who were associated with the work that day?

Mr. Fox. Wednesday Dean Turner was present, Doctor Brossard and I.

Chairman ROBINSON. How many hours did you put in that day, approximately?

Mr. Fox. We worked in the morning and in the afternoon.

Chairman ROBINSON. But not at night?

Mr. Fox. Not at night.

Chairman ROBINSON. Go ahead.

Mr. Fox. Thursday we worked morning, afternoon, and evening—Dean Turner, Doctor Brossard, I—and I believe we used another stenographer, Miss Braswell. On Friday—

Senator LA FOLLETTE (interposing). To whom was Miss Braswell usually assigned?

Mr. Fox. At that time I think she was assigned to the pool, the stenographic division. She is now assigned, I believe, to the chairman's office.

Friday we worked morning, afternoon, and evening—Dean Turner, Doctor Brossard, I, and Mrs. Garland.

Saturday we worked morning, afternoon, and evening—Dean Turner, Doctor Brossard, I, and Mrs. Garland.

Sunday, Dean Turner and I alone.

Monday, Dean Turner, Doctor Brossard—no—yes—Dean Turner, Doctor Brossard, and I, morning and afternoon; Dean Turner, Mrs. Garland, and I in the evening.

Tuesday, Dean Turner, Doctor Brossard, and I, and two stenographers—Miss Braswell and Mrs. Garland. Miss Braswell left, I believe, a little after midnight. Dean Turner, Doctor Brossard, and Mrs. Garland left a little after 3. I stayed there all night, with the exception of a short walk on Pennsylvania Avenue.

Chairman ROBINSON. Now, with respect to the second draft, did you have a number of meetings, the three of you who had been collaborating in the preparation of the first draft?

Mr. Fox. Well, this was really both drafts—the twenty-sixth draft and the thirtieth draft.

Chairman ROBINSON. That covered the meetings that the three of you had, and sometimes two of you, which have been specified according to your recollection?

Mr. Fox. Yes.

Chairman ROBINSON. Now, after your return in September and Doctor Brossard talking to you about his testimony before the committee with respect to this subject—when did you next talk to him, as you recall it?

Mr. Fox. It would be very difficult for me to say exactly. I should say some time after—I believe it was in connection with another investigation, the maple-sugar investigation which we were conducting—and some question came up of the delay which I was causing in having the men go out into the field; not being satisfied that we were quite ready to go I delayed the work somewhat, and I was called on for an explanation.

Chairman ROBINSON. Were you willing or reluctant to discuss it with him the second time? [After a pause.] I expect you to just answer promptly, yes or no.

Mr. Fox. Frankly, I was not very keen to discuss it.

Chairman ROBINSON. You preferred not to discuss it. Did you indicate that to him?

Mr. Fox. I did not.

Chairman ROBINSON. What?

Mr. Fox. I did not.

Chairman ROBINSON. What did you say to him?

Mr. Fox. I just—

Chairman ROBINSON. You will have to come through here. You had just as well go ahead and tell all about it now.

Mr. Fox. Senator, for the first time this year I have jotted down certain notes not only in connection with my interviews with Doctor Brossard, but with Doctor Dennis and Mr. Costigan, those few times I have seen Mr. Costigan.

Chairman ROBINSON. You have got the memorandum-keeping habit at last, have you? All right; state how many times you have



talked with Doctor Brossard about his testimony before this committee with respect to whether he had anything to do in connection with the sugar report.

Mr. Fox. About six.

Chairman ROBINSON. About six times?

Mr. Fox. Yes.

Chairman ROBINSON. Did he approach you each time, or did you go to him some of the times?

Mr. Fox. He approached me.

Chairman ROBINSON. Each time?

Mr. Fox. Each time, as I recall it.

Chairman ROBINSON. What was the burden of those conversations? What was the object of them?

Mr. Fox. Mr. Senator, I do not know what the object was. I could not tell you.

Chairman ROBINSON. Well, what did you imply to be the object of them? What was your understanding of the object of them?

Mr. Fox. He seemed very anxious to make very clear what he had in mind and what he proposed to do.

Chairman ROBINSON. Do you know why he was doing that? Did he tell you why he was running to you about his testimony before this committee and explaining to you and making clear to you what he meant?

Mr. Fox. Why, that did not seem unusual, because we had been associated together on the thing, and it is very natural—

Chairman ROBINSON (interposing). Then tell the committee why you are reluctant to talk with him about it if there was nothing unusual about it.

Mr. Fox. Well, because the statement as made was rather a sweeping statement.

Chairman ROBINSON. What statement are you referring to now?

Mr. Fox. The statement Doctor Brossard made when he was testifying.

Chairman ROBINSON. I will ask you a leading question. Did you imply that he knew that you took a different view of the facts with respect to his connection with the preparation of that sugar report from what he had stated before the committee?

Mr. Fox. Perhaps so.

Chairman ROBINSON. Now, you have hesitated for perhaps half a minute in answering that question. That does not appear in the record. Why do you hesitate? Why don't you answer it?

Mr. Fox. Because, Mr. Senator, Doctor Brossard testifying here testifies as a commissioner. He is in a position, therefore, to express opinions and conclusions. I am testifying as a member of the staff, and my testimony, therefore, it appears to me, ought to be limited to the statement of facts, which I have tried to do, with the single exceptions when I have been asked—

Chairman ROBINSON. Very well. I think that is exactly correct, but I have asked you a question of fact, and that is why you are reluctant to answer the questions I have asked you.

Mr. Fox. Because, Mr. Senator—

Chairman ROBINSON (interposing). It is because of your subordinate position on the commission?

Mr. Fox. Yes.

Chairman ROBINSON. Very well. I think that is a fair and a true answer. Now, then, how many more times did you talk to Doctor Brossard and what was the substance of those conversations? You have said there were six times and you have detailed two. He came to you each time. What did he say to you?

Mr. Fox. May I correct that?

Chairman ROBINSON. Yes.

Mr. Fox. He did not come to me. He called me to his office.

Chairman ROBINSON. Oh!

Mr. Fox. And usually it was, perhaps, in connection with some other matter, and then casually this subject was referred to.

Chairman ROBINSON. He called you to his office in connection with some other matter, but casually each time the subject matter of his testimony before this committee was mentioned to you by him?

Mr. Fox. Yes.

Chairman ROBINSON. Can you recall what was said on those other occasions? Did you make some memoranda, Mr. Fox?

Mr. Fox. I said I kept them.

Chairman ROBINSON. Yes. Now you may refer to your memoranda for the purpose of refreshing your memory. State what your memorandum shows, if you are prepared to say that it was made approximately or at the time of the incidents to which they relate.

Mr. Fox. Now these memoranda, I say, were prepared with reference to many subjects, and here is one when I went to see Mr. Costigan, complaining about the work of Doctor Simpson and also in connection with the work of some others.

Chairman ROBINSON. Those memoranda may be pertinent to some phase of this inquiry, but for the present and in answering the questions I am now asking you confine yourself to the memoranda you made with respect to your conversations with Mr. Brossard about his testimony before this committee.

Now, Mr. President, I desire to refer to the contemporary memoranda made by Mr. Fox. They show that the first time that Mr. Brossard talked to him about the question of his connection with the minority opinion in the sugar case—namely, the Marvin-Burgess report—was April 2, 1926, before Mr. Brossard ever appeared before the select committee.

Senator LA FOLLETTE. Will you read the first memorandum?

Mr. Fox. This is dated April 2, 1926.

And Mr. Brossard testified—the testimony I have already referred to—on June 30:

Was called in by Doctor Brossard about 12.50 in regard to the cane-sirup schedule, as Doctor Townsend had complained to him that the men were being delayed in going into the field. After the discussion on this matter, Doctor Brossard said—

And this is quoted in Mr. Fox's contemporary memorandum—

"By the way, I have been going over the record to see what I did upon sugar and I fail to find that I did anything; I didn't have anything to do with it. Turner did all the dictating and you supplied all the ideas."

Later, about 3.30, I stepped in the office again in connection with the Townsend matter to point out that Townsend had not previously attempted to see me or the chief investigator in connection with expediting his work and that his going to Brossard was exceedingly unfair. Brossard again turned to me and remarked, "Fox, tell me frankly, has my appointment to the commission affected the morale of the commission?" I said that to be candid with him the situation among the commissioners was such as to affect conditions on the staff; that, for instance, if it were possible to bring matters to the commissioner without causing a row I would long since have forced Mr. Comer to get off the fence and work positively upon the facts in each case. He agreed to that and said that he knew that Simpson was not at all pleased with his appointment and that probably Simpson had carried the tale of the demoralization of the staff to Taussig and that perhaps Comer had also. Whereupon I assured him that I did not think Comer had anything to do with it. I also told him that the staff was pretty much excited about the whole investigation. Whereupon he said that "the situation here is far more certain than it was before I joined the commission. If you remember when Culbertson was here, you and I were on the verge of losing our jobs." To which I replied that it would have made no difference to me; that I had made my plans to go back to the university. He returned, "Same with me; I was on leave of absence to go back any time."

Mr. Fox. These others are on other subject matters. I have here one Monday afternoon, April 12—

That was 10 days after Commissioner Brossard had first talked to Mr. Fox about this matter—

Chairman ROBINSON. Of what year?

Mr. Fox. 1926.

Chairman ROBINSON. All right. Go ahead.

Mr. Fox (reading):

"While in Doctor Brossard's office on other matters he remarked that he was trying to get the facts straight in regard to his connection with sugar, and as he could see it he had nothing to do with it except advise upon agricultural costs; that I had furnished all the ideas and that Dean Turner had dictated them, and that he had been consulted in regard to agricultural costs and had advised thereon. That as to the preparation of the report, which was revised by Commissioners Marvin and Burgess, he thought it advisable that he and I should both have the same facts; that we had the fact straight in regard to sugar."

This, Mr. President, was a statement made by a commissioner to a subordinate economist on the staff before he ever came before the committee of the Senate to testify concerning this matter.

Chairman ROBINSON. At the time of that memorandum and that statement, the time that that memorandum relates, did you make any statements to Doctor Brossard which you recall? When he said that you two ought to agree upon the facts as to your connection with the matter, did you make a statement to him?

Mr. Fox. I do not recall.

Chairman ROBINSON. Your memorandum does not show what you said in reply?

Mr. Fox. No.

Chairman ROBINSON. And you do not recall?

Mr. Fox. No.

Chairman ROBINSON. All right. Go to the next memorandum.

Now, I point out that the next contemporary memorandum made by Mr. Fox concerning his conversations with Commissioner Brossard about his connection with the Marvin-Burgess report was made on July 23, 1926, after Commissioner Brossard had testified before the committee that he had nothing to do with the preparation of this report except to submit tables. I will ask Senators to bear in mind that Mr. Fox was a subordinate on the commission and Mr. Brossard was his superior officer.

Mr. Fox. July 23, 1926. [Reading:]

"Doctor Brossard phoned while we were meeting on the final report on methanol and asked to see me as soon as it was over."

"As the commission held a meeting at 10.30, I did not get an opportunity to see him until the afternoon. When I returned from lunch about 2.15 I was told that he had phoned twice. Finally got to see him at 2.30."



"As soon as I sat down Doctor Brossard asked whether I had heard his testimony before the Senate committee on sugar and whether the testimony did not correctly represent the situation. I hesitated for a moment and then replied that we were all present during the preparation of the report. Doctor Brossard then proceeded to explain that he had not proposed to withhold any information; in fact, that he was ready to explain it all if he had been given the opportunity by Senator ROBINSON and Senator LA FOLLETTE, but that he did not propose to have LA FOLLETTE compel him to state that he had dictated the policy of the minority report. He said that he had not dictated the report, that the report had been dictated by Dean Turner; whereupon I told him in a sense we were all present and had all dictated parts, but that the final dictation and smoothing out was done by Dean Turner. Doctor Brossard also stated that we did not write the minority report, that 'we wrote the expert's report'; whereupon I told him that we wrote the report for Mr. Marvin and Mr. Burgess, and that no 'expert's report' was prepared in either case.

"Doctor Brossard also stated that he had not read the final report, that while Dean Turner and I were busy going over the reports with Messrs. Marvin and Burgess he had been occupied attending to other details.

"Doctor Brossard asked if there was anything in our files on sugar that showed his connection with the report, whereupon I told him that he could look over the files. He wanted me to go over the files and Brossard's testimony before the Senate committee and see if there had been any misstatements, and if there had he would be only too glad to go before the committee and ask for the opportunity to correct such misstatements."

Then on August 2, 1926, Mr. Fox prepared another contemporary memorandum of his conversation with Doctor Brossard:

Doctor Brossard called about 4.45 and wanted to know whether the plans for the Chinese trip had been completed; that Messrs. Marvin, Glassie, Lowell, and he had discussed the matter at noon; and that the report ought to be submitted to the commission, as Mr. Marvin was going away and the last regular meeting of the commission would be held to-morrow.

He discussed the question of personnel, and indicated that Newton had been to see him and that somebody (evidently Mr. Comer) had discussed the full details considered by the board about all these matters.

Finally, as I was ready to go he said: "By the way, before I forget it there is another matter that I wanted to speak to you about while it is fresh in our minds. Have you had a chance to look over the hearings or the details in regard to my testimony on sugar?" I told him that I hadn't, whereupon he restated the position that he had taken at our previous meeting—that he had not intended to evade, but was ready to tell everything, but didn't want to appear to take the whole credit for the work done. "You and I," he said, "know what happened," and he then went on to repeat what he intended to do if they had given him the opportunity—he knew the problems and was ready to discuss them as he knew them.

Mind you, the last two contemporary memoranda to which I have directed the attention of the Senate were prepared concerning conversations which occurred after Mr. Brossard had told the committee of the Senate that he had nothing to do with the Marvin-Burgess report except the preparation of tables, and before Mr. Fox was called to testify before the committee.

The last memorandum Mr. Fox had was dated January 3, 1927, just before the committee resumed its proceedings:

In response to a call from Doctor Brossard, went to see him about 10.15. When I entered his office he said that he would like to see the sugar files, especially the documents which he had submitted in connection with the preparation of the report. He said that he had obtained an inkling from the newspapers that the hearings may start again; that he did not want to take any credit in the preparation of the report or any part of it to which he was not entitled, but that he was fully ready to take the responsibility. Doctor Brossard emphasized the fact that he did not want to take credit for the report.

Doctor Brossard claims that he has reviewed the situation and can not recall having much to do with the report. He claimed that when the report went to Mr. Marvin and Mr. Burgess there was no summary. I pointed out that the summary was prepared before it went to them and that the only change was the addition of two pages describing the history of sugar beets and a few minor changes here and there—changes of emphasis or conclusion. He stated that Dean Turner and I spent two days going over the report with Mr. Marvin and Mr. Burgess, but that he did not go over it. I thereupon pointed out to him that as I recalled it he went over the report with Mr. Marvin and Mr. Burgess before Dean Turner and I were called in. He denied that, stating that Mr. Marvin asked him about the tests, and that as they were not clear to him either he suggested that especially Dean Turner and I be called in.

Mr. President, following Mr. Fox's testimony, Commissioner Brossard again came before the committee, on January 11, 1927. I read from the proceedings:

Chairman ROBINSON. Mr. Brossard, you have already been sworn, I believe?

Mr. BROSSARD. Yes, sir.

Senator WADSWORTH. Mr. Brossard, were you present in the room yesterday when Mr. Fox was testifying?

Mr. BROSSARD. Yes, sir.

Senator WADSWORTH. Did you hear his testimony in relation to the preparation of the so-called draft report for what later became the minority report on sugar?

Mr. BROSSARD. I did.

I heard all of his testimony.

Senator WADSWORTH. You caught the significance, I assume, of his statement or suggestion that he had interpreted your connection with some of that work in a way different from your own interpretation, and that he had interpreted somewhat differently the significance of your testimony in that connection than your own interpretation?

Mr. BROSSARD. Yes, sir; it seemed to me that he had a slightly different interpretation of the testimony.

I submit to any Senator who will read this testimony that there will appear a great deal more than a slight difference in the interpretation:

I do not know that he interpreted the testimony differently, but that he made it possible for a different interpretation to be made; he opened the way for a different interpretation to be made than what I had intended in my testimony.

Senator WADSWORTH. You have heard that testimony of yesterday, and I assume, of course, other Senators heard it also, and the questions having arisen directly or indirectly as I have attempted to describe, will you proceed in your own way now and tell us just what happened in your connection with the whole proceeding, in connection with your testimony, and tell us the story as clearly and comprehensively as possible.

Mr. BROSSARD. Well, I want to connect right back up with my testimony, because I think that will help to clarify the testimony. I want to make it clear, and I have never had any idea of anything else but making it clear. I am not used to having my integrity questioned, and, of course, I have been very much stirred because of a rumor which has been circulated around that it might be. I would like to refer, first, to a question asked by Senator LA FOLLETTE, found on page 1022 of my testimony given on July 1, 1926. Senator LA FOLLETTE's question is as follows:

"Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?"

When Senator LA FOLLETTE asked me that question I thought of all the testimony that I had given yesterday; yesterday being the 30th of June. I did not expect that Senator LA FOLLETTE was trying to have me make a statement contradictory to my testimony that had already been given and my testimony on June 30, 1926, as shown on page 985 of the printed record indicates in answer to the following question from Senator ROBINSON, what my participation in the report was, and I should like to read that verbatim:

"Chairman ROBINSON. What was your relationship to the sugar report?"

"Mr. BROSSARD. I was connected with the staff at the time the sugar report was under consideration as agricultural economist, and had charge of the sugar-beet investigation. At numerous times, the commissioners severally and jointly requested data on the cost of production of sugar beets, most of which were submitted to them during the time that they were considering the sugar investigation."

In addition to that, I prepared some tabular material at the request of the different members of the commission. I prepared a table on investments for Mr. Lewis. I prepared a table showing the relationship of the price per ton of sugar beets to the acreage planted the following year in sugar beets. That was for Commissioner Lewis. I prepared for Chairman Marvin and Commissioner Burgess a summary of the 2-year average costs and a summary of the 3-year average costs, and submitted a large table showing for the different States the average costs of production of sugar beets in each State and in the United States per pound of sugar extracted from beets. Then there has been other material. If you want these, they might go in the record.

Chairman ROBINSON. I do not know of any occasion for putting them in the record.

Mr. Brossard continued his direct testimony:

Now, right there I want to say that what I had reference to there as "other material" I had in my hand then and exhibited here, you will remember I think very definitely, I think every memorandum of mine that Mr. Fox has submitted in his testimony. Every single one, with one exception as I remember it, as my contribution, and that exception is the one that is in here now, Exhibit 12, marked as having been prepared by Dean Turner and myself, which I did not have a copy of, because there was only one copy made and that was kept in the files of the economics division by the chairman of the advisory board, Doctor Turner.

You will remember that that particular memorandum had something to do with sugar beets. I do not remember just what it is in detail, but I remember that much of it, and in addition, on



the top of that memorandum was put there by Mrs. Garland, I think, secretary to Mr. Fox now, "J. R. T. and E. B. B."

I think all I had to do with that memorandum was the part which pertains to sugar-beet costs, not beet-sugar costs but sugar-beet costs, and that is why my initials appear there.

Outside of that one memorandum, Exhibit 12, as far as I could tell from a description of the material as given by Mr. Fox, every one of these data, Exhibits 10, 12, 13, 14, 19, and 20, and I think one or two or three in addition, I offered for the record that day when Chairman Robinson said that he did not see any need for them going in the record.

Then, on page 986 of this record also, I made the statement that I had discussed the problems involved in this sugar investigation with members of the staff. That I never denied as participating in, and I am glad I had the privilege of doing it, as a matter of fact, and I have never had any reluctance to stand by any of the memoranda that I have submitted, and I would have been very glad to have had them all go in the record, as a matter of fact. I would like to have them go in the printed record. I think it would make this record very much more complete if all of these data were in there, because they will show, I think, quite definitely, just how much these data were changed—these memoranda were changed and how different the result which finally came out as the sugar report as now printed is from these data which I submitted, showing that it was a part of the process of getting these data into the hands of the members of the staff who were preparing this report.

I think Mr. Fox and I are in substantial agreement on nearly every point that he mentioned.

I leave that to the judgment of any Senator who will read the record.

With respect to the dictation of that report, I may say that I think, as I remember it now, I do not have a single phrase in the final sugar report in my language. I am perfectly willing to submit these memoranda and have anybody check them. I have not checked it verbatim, but I do not have any hesitancy in letting them go in and letting them be checked, because Dean Turner, who was chief of the economics division and who was chairman of the advisory board and the real dean of the commission's staff, dictated the report. Mr. Fox and I submitted memoranda, as he has stated. He, I think, helped more in the report than I did, because he had been in it all the time. He was with it from the very beginning; he helped draw the schedules. I came into it after it was a long ways along and had no connection with it except as I was asked to do so by commissioners and by the chairman of the advisory board who was my superior, and whom I was compelled to obey.

Now, coming back to this question of Senator LA FOLLETTE, my answer was:

"As an agricultural expert on the staff of the commission; yes, sir, Senator." That is on page 1022, because I had in mind all that I had said yesterday I had contributed toward the sugar report. I did not think Senator LA FOLLETTE was trying, and I do not think now he meant to limit my testimony, after I had said that I had prepared these many memoranda on sugar-beet costs and these other materials and had said that I had discussed the problems with the staff.

I ask any Senator who will take the time to read his direct examination on his first appearance before the committee, namely, June 30, 1926, which I have already read to the Senate, to determine that question for himself.

Senator LA FOLLETTE, I did not think you intended to limit that to the specific statistical tables on sugar-beet costs which I had specifically described there. At least, I never interpreted your question to be such. When you said that, I thought you had in mind all that I had put into the record yesterday as my testimony, my contribution to the sugar report, and naturally I answered "Yes." I had nothing to do with it as a commissioner, because I was not a commissioner.

Of course I knew that.

All I had to do with it was as an agricultural economist on the staff of the commission, and everything that I had testified to on June 30, 1926, was what I had to do with the sugar report. I had it in mind. I did not want to limit the thing, but I wanted to make it exact and accurate, instead of making a guessing proposition out of it.

There was some difficulty also with a question which you asked me, Senator LA FOLLETTE, which is given on page 1020. You asked me:

"Mr. Brossard, did you see any of the drafts of the minority opinion in the sugar report made under section 315 at any time before it was transmitted to the President?"

Now, listen to this:

My idea of what this minority opinion is is very plain, and I want to have it definitely understood, because there turns my answer. You will remember I made several replies to your question and then you insisted that I answer it just as it was, "minority opinion." I was trying to ascertain what you wanted in the question by that "minority opinion." Now, "minority opinion" to me, after having been both a member of the staff and a commissioner, is this, that the minority opinion is never the minority opinion until the minority have approved it, for I

have seen reports that came from the advisory board to the commission so demolished and rewritten and made over by the commissioners that you would never know it was the same thing at all, and so the staff members can not take credit for having written the minority opinion at any time.

I call attention to the fact that in his conversation with Mr. Fox, according to his contemporary memoranda, Mr. Fox pointed out to Mr. Brossard that there was no difference between the minority opinion and the experts' opinion, that what they had done was to prepare the draft of the minority opinion, which was subsequently sent to the President.

Commissioners Marvin and Burgess were solely responsible for that minority opinion, and how could a man tell what they had done with it after it was submitted to them? That was their affair. That is why I answered your question two or three different ways. I was trying to get you to explain in some way what you meant by that "minority opinion." It was a perfectly honest and frank proposition.

Chairman ROBINSON. Well, just go ahead with your statement. Mr. BROSSARD. The Marvin-Burgess report, of course, was changed. I said I had not read the report, and I find since it has been printed that there were a number of additions to it since I saw it, and it was changed—I will not say completely, but it was changed greatly—as can be readily shown by the comparison of the final sugar report of the two commissioners with the memorandum that was submitted.

I think that is all I have to say with respect to it. I did not want to let this opportunity go by without explaining what I meant by my former answer.

Chairman ROBINSON. Have you any other questions? Senator WADSWORTH. Not on this point. I want to ask some questions on another point, if you have finished with this.

Senator LA FOLLETTE. I think the record speaks for itself.

I am now reading from page 294 of the Finance Committee's reprint of the select committee's testimony:

Chairman ROBINSON. You read a while ago a portion of the testimony which you gave, and explained it to the committee as consistent with your participation in the making of that draft, as I construe your testimony.

Mr. BROSSARD. Yes, sir.

Chairman ROBINSON. Turn to page 985 of the record and read with me. Of course, we can not read the entire record, but there are significant portions that I think ought to be presented in connection with your testimony just given, in order that you may explain that.

"Chairman ROBINSON. Which report did you concur in, the majority or the minority report, in your opinion or conclusion? You were associated with the preparation of the report, were you not; or at least, with the summarization of the data?"

"Mr. BROSSARD. No, sir; I did not have anything to do with it."

"Chairman ROBINSON. What was your relationship to the sugar report?"

Then came the answer which you read a while ago.

Mr. BROSSARD. Yes, sir.

Chairman ROBINSON. Then, down where you quoted the chairman as saying "I do not know of any occasion for putting that in the record," referring to the data that you had, that is immediately followed by a question by the chairman:

"Did you form or express any opinion as to which of the reports in the sugar case were correct—the majority or minority report?"

"Mr. BROSSARD. I may say now that I have never read the report of Commissioners Culbertson, Lewis, and Costigan. I have not to this day read it. I do not know the exact points of view that were taken there. I have not had a copy made available to me."

"Chairman ROBINSON. Did you read the other report?"

"Mr. BROSSARD. I have not read the other report; no, sir. I have not had it. I have never read it, but I know something about the problems, because I talked to the experts on the staff of the commission."

Mr. BROSSARD. Yes, sir.

Chairman ROBINSON. Do you think that fairly reflected the fact that you were in conference with two experts on the staff of the commission for the preparation of a report for the uses that you have stated?

Mr. BROSSARD. Mr. Chairman, this report, I said—

Chairman ROBINSON (interposing). All I am interested in is whether you think that answer fairly reflected the facts. I have no objection to your making any explanation.

Mr. BROSSARD. It fairly reflected what I had in mind when I answered the question.

Chairman ROBINSON. All right.

Mr. BROSSARD. Because, I think this is the situation: When we were talking here about that report, I meant the final, completed report of Commissioners Marvin and Burgess and that distinction is essential, it seems to me, in all of these records. That report was their report, and, of course, it was a completed thing. I understand that the conclusion of the report was entirely rewritten by Commissioners Marvin and Burgess. That is what I understood at the time; that the conclusion of the report had been entirely rewritten, and I had not seen the rewritten conclusion, and I wanted to have a chance to look at the printed report or some other report to see what the conclusion was.



Chairman ROBINSON. Now, turning to page 1020, where you quoted some questions by Senator LA FOLLETTE. I will read from the record of your testimony before this committee at page 1020: "Senator LA FOLLETTE. Mr. Brossard, did you see any of these drafts of the minority opinion in the sugar report made under section 315 at any time before it was transmitted to the President?"

"Mr. BROSSARD. The drafts of the completed report?"

"Senator LA FOLLETTE. The drafts of the minority opinion."

"Mr. BROSSARD. I saw parts of it; yes, sir."

"Senator LA FOLLETTE. What parts did you see?"

"Mr. BROSSARD. Well, I do not remember just now. I submitted some statements to the chairman and to Commissioner Burgess, which I offered for the record the other day, Senator LA FOLLETTE."

"Senator LA FOLLETTE. Will you read my question?"

"(The reporter reads as follows:)"

"Senator LA FOLLETTE. Mr. Brossard, did you see any of the drafts of the minority opinion in the sugar report made under section 315 at any time before it was transmitted to the President?"

"Mr. BROSSARD. I saw the drafts and knew what they were, Senator LA FOLLETTE, but I did not read the completed draft report. I saw it lying on the chairman's desk, and I do not know but that I saw it—I think that is the only place I ever saw the completed draft of the report."

"Senator LA FOLLETTE. Did you see any sections or paragraphs of the minority opinion on the sugar report referred to in my preceding question?"

"Mr. BROSSARD. Identically, I am not sure that I did; no, sir—the identical paragraphs. I can not say."

"Senator LA FOLLETTE. Well, did you see any of the tentative drafts of sections or paragraphs before they were incorporated in the minority opinion which was transmitted to the President?"

"Mr. BROSSARD. I saw, Senator LA FOLLETTE, material which had been transmitted as tentative to go in the report which was transmitted, but I am not sure whether it was submitted, and whether it was included in the final report of the minority."

"Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion with regard to its contents?"

"Mr. BROSSARD. I was asked to submit certain specific tables with respect to it; yes, Senator. I had instructions, as a member of the staff, to prepare for Chairman Marvin and for Commissioner Burgess certain tables which I offered in evidence the other day."

"Senator LA FOLLETTE. I am not talking about those tables. I am talking about the content of the minority opinion."

"Mr. BROSSARD. Will you read the question again, please? I did not get it."

"(The reporter read as follows:)"

"Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion with regard to its contents?"

"Mr. BROSSARD. Is my answer responsive?"

"Senator LA FOLLETTE. I do not think it is."

"Mr. BROSSARD. Well, I did not discuss the question of what should go in either report, if that is what you are asking about. I never did go before those people and tell them what I thought ought to be in that report; no, sir."

"Senator LA FOLLETTE. I did not ask you if you went before them. I asked you if you were consulted, either directly or indirectly, by either one or all of the commissioners who signed the minority opinion with regard to its contents."

"Mr. BROSSARD. No, sir."

"Senator LA FOLLETTE. You were not?"

"Mr. BROSSARD. Not that I remember of."

"Senator LA FOLLETTE. Were you consulted, either directly or indirectly, by the commissioners who signed the minority opinion in the sugar report in regard to the phraseology of any part or parts of the draft before it was submitted to the President?"

"Mr. BROSSARD. No, sir."

There are other questions that relate to other subjects. Then further down the page, omitting the questions that relate to another subject:

"Chairman ROBINSON. Did you, yourself, dictate any portion of the minority sugar report?"

"Mr. BROSSARD. I did not."

"Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?"

"Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator."

I have read all of that testimony in order that the full course of the examination that you were subjected to when you testified before might be in the record in this connection. I have no further questions.

Mr. BROSSARD. There is just one thing—

Chairman ROBINSON. You may make any explanations you desire.

Mr. BROSSARD. I just want to call attention to one thing. In my own mind that distinction between (1) the experts' report, (2) tentative drafts of the experts' report, (3) tentative drafts of the minority opinions or the minority sugar report, (4) the minority opinion or the minority sugar report as it was signed by Commissioners Marvin and Burgess, and (5) the supplemental reports on sugar prepared in compliance with the President's requests for additional information—the distinction between those separate entities is absolutely essential, and that was the reason I

made the distinctions in my testimony here, so that it would be perfectly clear.

Chairman ROBINSON. All right. Now, with respect to this data, I think it had better be in the record, in view of Mr. Brossard's statement that he would like to have it in.

Senator LA FOLLETTE. I have no objection.

Mr. President, I have gone into this matter at some length because, as a member of the select committee, I felt it was my duty to call this testimony to the attention of the Senate. As I stated at the outset, I believe that an impartial reading of his testimony will convince any Senator that Commissioner Brossard was not a frank, honest, open witness before the committee; that he was, to say the least, disingenuous and evasive in his testimony concerning this important and controversial subject. Furthermore, the testimony shows his conversation with a subordinate on the economic staff of the commission before his testimony took place, and then, following his denial that he had anything to do with the preparation of this minority report except the submission of tables, he had three different conversations with that subordinate before Mr. Fox was called to testify concerning his interpretation of Brossard's connection with the minority report on sugar.

I think, Mr. President, that this testimony will convince any impartial reader that Mr. Brossard can not command the respect and the confidence of either the Senate or the country, in view of the manner in which he conducted himself under oath before this committee of the Senate. There are other reasons why I think the Senate should reject Mr. Brossard's nomination.

I want to call attention to the testimony of Doctor Taussig, who is one of the most distinguished economists in America; he is the dean of that important group. I read from his testimony before the committee:

Senator LA FOLLETTE. In your recent address in New York before the American Economic Association, on December 29, 1925, you expressed the belief that recent appointments to the commission had not been made with due regard for judicial character, ability, training, and open-mindedness; and in view of the character of this investigation, would you state for the benefit of the committee more particularly what you had in mind when you made that statement?

Doctor TAUSSIG. My information upon those subjects, Senator, necessarily comes partly from what appears in the public prints, partly from conversations with former associates or friends of mine. It is no information of any kind which the committee can not get of its own accord, and the committee has much better sources of information as to the personnel and as to the previous history of the appointees.

Senator LA FOLLETTE. While I do not like to press you to make any answer that you do not feel inclined to make, in so far as I am personally concerned, because of your standing as an economist and your long association with this problem in general, and your previous experience with the tariff commission in particular, I for one would be glad if you feel free to make that statement more explicit and in detail for the benefit of the committee.

Doctor TAUSSIG. I thought it was unfortunate. I hesitate to express myself about individuals.

Senator LA FOLLETTE. I realize your natural reluctance, but you realize—

Doctor TAUSSIG (interposing). I thought it was unfortunate that a gentleman who had long been known as a representative before Congress of a particular interest—Mr. Burgess, who was secretary, I think, of the Potters' Association and who was known to have been frequently before Congress—should have been a tariff commissioner. I felt it to have been an unfortunate choice.

Senator LA FOLLETTE. You feel that would tend to break down the public confidence in the Tariff Commission.

Doctor TAUSSIG. I thought so.

Senator REED. Mr. Burgess is no longer a commissioner?

Doctor TAUSSIG. Mr. Burgess is no longer a commissioner. I thought it was unfortunate that Mr. Brossard was appointed a member of the commission. I have no criticisms to make upon his appointment personally, but I think it was unfortunate that he should have been a member of the staff of the commission, a junior member, one who could not be said to be distinguished by any previous achievements on the commission, and I concede that it might be a good plan to make promotions to a commissionership something within the view of members of the staffs of the several commissions, as the Federal Trade Commission, for instance. That is a matter of public policy upon which there may be two different opinions, but if a person was on the staff of the commission and is then chosen to be commissioner, it should be one whose experience, training, and term of service would single him out as the one for promotion. That hardly was done in that particular case—

Referring to Mr. Brossard—

It was a junior member of the staff, who evidently was not called out from the staff because of his character and experience and



knowledge attained by long and good service on the staff of the commission, and an appointment of that sort does not seem to me to be conducive to the best feeling among the commission's staff. If a member of the staff should be appointed, it should be one who in the staff himself is recognized as a person of character, experience, attainments, and suitability.

Now, Mr. President, I want to read from the testimony of Mr. Culbertson, now minister to Chile, who had been on the commission while the controversy with reference to the sugar report took place:

Senator LA FOLLETTE. I should like to ask you—

Addressing Mr. Culbertson—

I should like to ask you if, on July 27, 1925, shortly after your arrival at the legation in Bucharest, you wrote Mr. Costigan a letter?

Mr. CULBERTSON. A personal note?

Senator LA FOLLETTE. A personal note.

Mr. CULBERTSON. I think I did.

Senator LA FOLLETTE. I hand you that note herewith and ask you if that is your letter?

Mr. CULBERTSON. That is my letter.

Senator LA FOLLETTE. Mr. Chairman, I would like to read that letter.

Chairman ROBINSON. Very well.

Senator LA FOLLETTE. The letter contains a newspaper clipping which is attached to the letter. The letter is written on the stationery of the legation of the United States of America, dated July 27. As a matter of fact, that is July 27, 1925, is it not, Mr. Culbertson?

Mr. CULBERTSON. Yes, sir.

Senator LA FOLLETTE. The clipping attached to the letter is as follows:

A UTAH MAN TO TARIFF COMMISSION; SUCCEEDS EMPORIAN

"SWAMPSCOTT, MASS., July 10 (A. P.).—The President has appointed Edgar Bernard Brossard, of Utah, to be a member of the United States Tariff Commission, succeeding William S. Culbertson, recently appointed minister to Rumania."

The letter is as follows:

LEGATION OF THE UNITED STATES OF AMERICA,

July 27.

DEAR MR. COSTIGAN: I can hardly believe it, but it's in the Emporia Gazette, so that it must be true. It's not much of a compliment to me that Brossard is selected to fill my place. If this appointment is to be regarded as a revelation of the President's policy, I feel fully justified in leaving the commission. They were certain to put you and me into a minority and I would have been driven by the force of circumstances to break with my party without saving the commission. How does Dennis take the new appointment? This will test his professions to me. I didn't suppose that Coolidge would do the thing so rawly if he did it at all. Evidently our suspicious were correct and Brossard has been playing with the sugar lobby and now he has his reward! I can imagine the effect on the staff—upon men like Comer, Clark, Delong, Simpson, Wallace, etc. They must feel that honesty is not the best policy. Write me through the pouch what the liberal elements will do about confirmation. If they can defeat Warren, this raw case ought to be easy.

I arrived here last Saturday. My family is in Paris. Since the King is away, I may not stay but return to central Europe. I can't actually function as minister until I am received by the King.

My work here will not be less exciting than in Washington and I hope more satisfactory. I shall miss your wise advice and friendly sympathy. More power to your arm in the fight you are in.

Affectionately yours,

W. S. CULBERTSON.

I also wish to read from former Commissioner Costigan's letter, which was addressed to the senior Senator from Arkansas [Mr. ROBINSON] at the time Mr. Costigan resigned from the Tariff Commission, setting forth the reasons for his resignation. I had it printed as a part of my remarks on the flexible tariff provision; and it will be found on page 3942 of the RECORD of September 25, 1929:

The public was much less fortunate, however, in regard to other appointments—

Says this letter from Senator-elect COSTIGAN, formerly commissioner.

Preceding the Senate committee's investigation, when vacancies were created by Commissioner Culbertson's and later by Commissioner Burgess's resignations, Commissioners Brossard and Baldwin were named. After a limited service, during which, to be entirely candid, he was little better than a rubber stamp in the hands of the Marvin group, Commissioner Baldwin resigned—in part, it was said, for reasons of health. He has since been succeeded by Commissioner Lowell.

Commissioners Marvin, Brossard, and Lowell stand to-day a united tariff band, steadily pressing for higher tariff rates and

against important reductions, reckless on occasions in their treatment of facts and the law.

Farther on he says:

Commissioner Brossard has long been known in Washington as a political protégé of Senator Smoot. He was on the staff of the commission before he became a member, and in both relations created an impression of a biased, as distinguished from a scientific or judicial, mind. Members of the Senate investigating committee are aware that, while testifying under oath, he appeared at times to be cautiously hiding material information within his knowledge which was sought by such members. As a witness, he strengthened the view that he is a partisan who wishes to favor certain tariff-protected interests.

I submit the testimony of Mr. Culbertson and Mr. Costigan, former associates on the commission while Mr. Brossard was a member of the staff. I submit the testimony of the dean of American economists, Doctor Taussig, that he considered Mr. Brossard's appointment to the commission, in the first place, an unfortunate mistake.

Mr. President, in view of all these facts, in view of what I believe to be the demonstration that I have made to the Senate this afternoon that Mr. Brossard was disingenuous, evasive, and attempted to mislead the committee in the examination conducted by the select committee concerning his participation in the sugar report, and in view of the further fact that two of his former associates on the commission and the dean of American economists, Doctor Taussig, have branded his appointment as unfortunate, I think the Senate is more than justified in rejecting his confirmation.

Mr. President, if the Senate desires to build up an impartial fact-finding body which will pass upon these tariff cases as a judge would pass upon cases before him in equity, then I say that nothing the Senate could do would be more effective in establishing that kind of a commission than to reject the nomination of Mr. Brossard in view of the record taken by the committee. I say that his appointment demoralized and broke down the morale of the staff of the commission; and I agree with the statement made in former Commissioner Culbertson's letter that Mr. Brossard's appointment was equivalent to saying to members of the staff who were seeking conscientiously to discharge their duties that honesty was not the best policy.

Mr. President, I hope that this nomination will be rejected.

Mr. REED obtained the floor.

Mr. McNARY. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Pennsylvania yield to the Senator from Oregon?

Mr. REED. I do.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	Keyes	Shipstead
Barkley	Frazier	King	Shortridge
Bingham	George	La Follette	Simmons
Black	Gillett	McGill	Smith
Blaine	Glass	McKellar	Smoot
Borah	Glenn	McMaster	Steck
Bratton	Goff	McNary	Steiwer
Brock	Goldsborough	Metcalf	Stephens
Brookhart	Gould	Morrison	Swanson
Broussard	Hale	Morrow	Thomas, Idaho
Bulkeley	Harris	Moses	Thomas, Okla.
Capper	Harrison	Norbeck	Trammell
Caraway	Hastings	Norris	Tydings
Carey	Hatfield	Nye	Vandenberg
Connally	Hawes	Oddie	Wagner
Copeland	Hayden	Partridge	Walcott
Couzens	Hebert	Phipps	Walsh, Mass.
Cutting	Heflin	Pine	Walsh, Mont.
Dale	Howell	Ransdell	Watson
Davis	Johnson	Reed	Wheeler
Deneen	Jones	Robinson, Ark.	Williamson
Dill	Kean	Schall	
Fess	Kendrick	Sheppard	

The PRESIDENT pro tempore. Ninety Senators having answered to their names, a quorum is present. The Senator from Pennsylvania is recognized.

Mr. REED. Mr. President, the challenge to the fitness of Doctor Brossard for membership on the Tariff Commission involves a comparatively simple story, and I believe it is possible to tell it in a few words.



Doctor Brossard was born in Idaho, educated at first in Utah, subsequently went to some eastern universities, Cornell, I believe, and the University of Minnesota, and all of his postgraduate work was spent in study on farm management and farm economics. Then he was taken on the faculty of the Utah Agricultural College, and from that was appointed to the staff of the Tariff Commission. After about two years spent in staff work on the Tariff Commission he was promoted by the President to be a member of the commission. That was in 1925.

While he was a member of the staff of the Tariff Commission his principal employment was the gathering of data in the preparation of summaries regarding the production of sugar, both beet and cane sugar, I believe, but principally beet sugar.

Mr. KING. Mr. President, the first work he did related only to beet sugar.

Mr. REED. He began with beet sugar; yes. In addition to that, he was put to work on the Tariff Commission for some time upon the preparation of the wheat report on the application of certain wheat producers for an increase in the tariff on wheat. But his principal work was in connection with the preparation of this material on sugar.

At that time the Tariff Commission consisted of five members, three Democrats—Mr. Costigan, Mr. Lewis, and I think Mr. Culbertson—

Mr. ROBINSON of Arkansas. Mr. Culbertson was not a Democrat.

Mr. REED. No; I am wrong about that. It consisted of five members, in any event, and the sixth member, Mr. Glassie, had been appointed as a Democrat, but his appointment was challenged and he did not sit for a large part of the time in the sugar investigation. I think I am correct in that.

The final report made to the President was made by three members, constituting a majority, which recommended a decrease in the duties on sugar, and a minority report, signed by Messrs. Marvin and Burgess, which recommended an increase in the duties on sugar. Whether Mr. Glassie actually joined in that or whether he was on the commission at the time I do not know. We always talked of it as the minority report.

The select committee, headed by the distinguished Senator from Arkansas [Mr. ROBINSON], which held meetings to consider the workings of the Tariff Commission, sat in the year 1926. It began in March, 1926, as I recall it, and I confess that my own recollection of the proceedings of the committee is faint, although I was a member of the committee, and I think attended all of its hearings.

In substance the investigation of Doctor Brossard came down to this, that when first called to the stand he testified that he had nothing to do with the preparation of the report, meaning the minority report made by Messrs. Marvin and Burgess in favor of an increase in the sugar duties. He was examined at considerable length at that time as to what he actually did do.

Subsequently a witness named Fox, one of the technical staff of the Tariff Commission, was called to testify, and it was thought by some members of our committee that Fox's testimony involved a contradiction of what had been testified to by Brossard on his first appearance. Thereupon Brossard was recalled and confronted with the apparent contradiction and undertook to explain it. His explanation was considered by some members of the Senate committee to be satisfactory, and unsatisfactory by others. That is the principal challenge to Doctor Brossard's confirmation at this time.

Mr. HARRISON. Mr. President, may I ask the Senator a question?

Mr. REED. I yield.

Mr. HARRISON. The Senator was a member of the committee. Did he think the testimony of Mr. Fox and that of Mr. Brossard were contradictory?

Mr. REED. On the whole; no. I found nothing that was discreditable or that indicated an intention on Brossard's part to evade or conceal facts. I found a confusion in the

minds of the committee and in the minds of witnesses as to what was meant by the word "report" and by the word "opinion." It seemed to me that the testimony was that of honest men honestly trying to give the facts.

Mr. HARRISON. And the Senator now states to the Senate that he thinks that Mr. Brossard was not evasive, but was open and candid, and told the facts, when he appeared as a witness?

Mr. REED. That was my impression at the time, yes; and it still is.

Mr. COPELAND. Mr. President—

The VICE PRESIDENT. Does the Senator from Pennsylvania yield to the Senator from New York?

Mr. REED. I yield.

Mr. COPELAND. Not all of us have knowledge of the events and of the circumstances connected with this affair. What was it about? What was the report? Where was the difference of opinion?

Mr. REED. That is what I am just about to explain. While Doctor Brossard was a member of the staff of the Tariff Commission he was put to work on the preparation of the data and the summaries relating to beet sugar, in connection with the sugar investigation. The questions which were asked of him when he came before our investigating committee first, in March, 1926, were as to the extent which he, then a member of the staff only, had participated in the preparation of the report which was sent to the President by Messrs. Marvin and Burgess. It was thought by some members of our committee that his answers to those questions were evasive, or indicated a desire to conceal the extent of his participation, and I want to explain to the Senate just what was said and what the apparent contradiction was.

Mr. COPELAND. Will the Senator tell us what that report was?

Mr. REED. As I have said, there were two reports made by the members of the Tariff Commission to the President. One of them, signed, as I recall, by Culbertson, Costigan, and Lewis, recommended a decrease in the duties. The other, signed by Marvin and Burgess, recommended an increase in the sugar duties. The Senate will remember that the President, receiving these reports, took no action in regard to a change of the duties, but allowed the duties to remain as they were.

It was claimed that Brossard had an important part in the preparation of the minority report, which was signed by Marvin and Burgess and sent to the President. Even if he did, it would not have been discreditable to him at all. The mere fact that after investigating the subject he concluded that an increase in duty was justified might have been erroneous, but it would not have been discreditable. That is not claimed to be any reason why he should not be confirmed, as I understand it. The reason that is urged is that, having participated in the preparation of that report, he lied about it, or attempted to conceal the facts, or to evade, when he was questioned about it. If that is true, it reflects upon his integrity, and he should not be confirmed; but I do not think it is true. I think the testimony to which I will call attention in a moment shows that he was quite explicit, quite candid, and that he made no effort to run away from the facts, but that he was confused, and so were some of his questioners, by the fact that there were a number of different documents spoken of as "reports." Only one was the report from these commissioners to the President, but that was based on some drafts, "draft reports," as they were sometimes called, which were prepared by experts and submitted to the commissioners, and before them there were reports in the nature of memoranda giving tables and comparative costs. There were perhaps five different groups of single papers which could be called reports, and the questions were asked, because of the manner in which they were propounded, were susceptible of misunderstanding.

Mr. COPELAND. Mr. President, let us have the record clear. At that time Mr. Brossard was not a member of the commission?

Mr. REED. No; he was not.



Mr. COPELAND. He was an employee of the commission?  
Mr. REED. He was one of a large number of technical employees.

Mr. COPELAND. And what part he had in preparing the minority report was the part which an employee would have in getting together material. Am I right in that?

Mr. REED. That was his proper function; yes. It was thought or suspected that he was the person that had actually written the report for Marvin and Burgess, and it was suspected by some members of our committee that although that was the fact, Brossard was trying to lie out of it, thinking that that carried some responsibility. So it is important to note just what did happen, and as far as I am able to glean the facts, they are these:

The commission spent the better part of two years in an analysis of the costs of production here and abroad, and devoted a great deal of thought to the selection of the appropriate period to take for the purpose of comparing costs. Not to go too much into detail, it was claimed by the majority members of the commission, that they ought to go back to the earlier years to get comparative costs, while it was argued by Messrs. Marvin and Burgess that the preceding two or the preceding three years were the appropriate period for which costs ought to be compared.

Brossard, in pursuance of his duties, prepared a lot of tables to show the comparative costs for both periods, and a lot of memoranda which bore on the appropriateness of the one or the other period as the right one to take.

Brossard testified, and it was not contradicted, that not only did he not write that final minority report which was submitted to the President by the two commissioners, but that he never even read it, and did not read the majority report. He was asked by the senior Senator from Arkansas [Mr. ROBINSON], the chairman of our committee, with which of the two reports he agreed in his own opinion, whether he agreed with the majority, in favor of a reduction of duty, or the minority, in favor of an increase, and he replied that he did not agree with either report, because he had not read either. He testified in regard to his activities in this sugar matter as follows.

This, if you please, is before he was asked the questions which led to all the trouble. This is the testimony that led up to the question which it is claimed was not candid and sincere. He was asked by Senator ROBINSON:

Which report did you concur in, the majority or the minority report, in your opinion or conclusion? You were associated with the preparation of the report, were you not, or at least with the summarization of the data?

I am going to tax the patience of the Senate when I repeat that question because, as Senators will see, there are four questions all asked in one:

Which report did you concur in, the majority or the minority report, in your opinion or conclusion? You were associated with the preparation of the report, were you not, or at least with the summarization of the data?

Mr. BROSSARD. No, sir; I did not have anything to do with it.

Chairman ROBINSON. What was your relationship to the sugar report?

Now notice the fullness of this answer:

Mr. BROSSARD. I was connected with the staff at the time the sugar report was under consideration as agricultural economist and had charge of the sugar-beet investigation. At numerous times the commissioners severally and jointly requested data on the cost of production of sugar beets. I think there are something like 21 or 22 memoranda that I submitted to the commission on the cost of production of sugar beets, most of which were submitted to them during the time that they were considering the sugar investigation.

In addition to that, I prepared some tabular material at the request of the different members of the commission. I prepared a table on investments for Mr. Lewis. I prepared a table showing the relationship of the price per ton of sugar beets to the acreage planted the following year in sugar beets. That was for Commissioner Lewis. I prepared for Chairman Marvin and Commissioner Burgess a summary of the 2-year average costs and a summary of the 3-year average costs, and submitted a large table showing for the different States the average cost of production of sugar beets in each State and in the United States per pound of sugar extracted from beets. Then there has been other material. If you want these, they might go in the record.

"Other material" which he offered for the record, as the Senate will see.

Chairman ROBINSON. I do not know of any occasion for putting them in the record.

Did you form or express any opinion as to which of the reports in the sugar case was correct—the majority or minority report?

Mr. BROSSARD. I may say now that I have never read the report of Commissioners Culbertson, Lewis, and Costigan. I have not to this day read it. I do not know the exact points of view that were taken there. I have not had a copy made available to me.

Understand, these reports were supposed to be secret and confidential between the commission and the President. There was nothing peculiar in their not being furnished to the members of the staff for their study.

Chairman ROBINSON. Did you read the other report?

Mr. BROSSARD. I have never read the other report; no, sir. I have not had it. I have never read it, but I know something about the problems, because I talked to the experts on the staff of the commission.

There we have the flat statement, which has not been contradicted by Mr. Brossard subsequently or by any other witness, that he not only did not write this report but never even read it nor did he read the majority report. He had never seen them. They continued to be held in confidence.

Chairman ROBINSON then asked him:

Chairman ROBINSON. Well, did you have any opinion as to which was the better report, the more reliable?

Mr. BROSSARD. Well, I may say, Senator, that I think the study of the recent period was more in agreement with the purposes of the act than to go back to the years 1916 and 1917 and the war years and the after-war years for purposes of comparison, under the act. There were two reasons for that, from my point of view as an economist, and I expressed them at the time to Doctor Bernhardt, who was in charge of the sugar division.

Then he goes on and gives his reasons for that testimony at length, which I do not need to read. Chairman ROBINSON then asked?

Do I understand you to say that you prefer Marvin's report, as distinguished from the other?

Mr. BROSSARD. I did not say which I preferred, for I have not read them.

This is material, you will see, Mr. President, because this man, who never even read this report, is accused of having written it and of concealing the facts. Obviously, it is not the report of the commission to the President that he could have written.

A little later on, at the session immediately afterwards, Brossard was still on the stand, and was asked by Chairman ROBINSON again:

Chairman ROBINSON. Did you, yourself, dictate any portion of the minority sugar report?

Mr. BROSSARD. I did not.

Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?

Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator.

That is the statement made by Brossard, which is claimed to be false, evasive, and misleading. Mind you, Mr. President, he had previously testified to his preparation of this great mass of material, had testified that he was constantly consulted by both minority and majority members of the Tariff Commission, had testified that he was in charge of the investigation of sugar-beet production. He made no concealment of that. It was an historical fact that anyone could verify. He made no bones of admitting the fact that he had been in charge of this investigation and in constant consultation with these members of the commission.

Then comes Mr. Fox, who back at the time of the preparation of the report in 1924 had been a colleague of Brossard's on the staff of the Tariff Commission and was still on the staff of the commission and at the time of testifying was a subordinate of Brossard, because Brossard was then a commissioner and Fox was still on the staff. Fox testified in substance that he had been called upon by the commission to work under great pressure in June, 1924, in rushing out this sugar report; that he had worked long hours into the night, sometimes as late as 4 o'clock in the morning; and



that helping him in that work were Doctor Turner and a stenographer and Doctor Brossard; that Brossard was with him on many of these night sessions.

Fox produced for our committee copies of certain draft reports which these experts had prepared for the use of the minority members. They were put in the record of our hearings, are printed and available to the Senate. These reports, or draft reports, as they properly should be called, were turned over to Marvin and Burgess, who then sat down and prepared their own report. Marvin and Burgess took this material that came to them from Doctor Turner and Mr. Fox and Doctor Brossard and with that as a basis prepared a final report which they signed and turned over to the President. That final report was also produced for our committee and was printed, and is to be found in the record of the select committee hearings at page 1144. That is the report which Brossard says he never saw, and there is no evidence that he ever did see it. That report is markedly different from the suggestions of the reports that were turned over to those commissioners by Turner and Fox and Brossard.

Out of that has risen this whole tempest—the fact that these drafts, these suggestions, were prepared in these long, night vigils by these men on the staff. The fact is that they are sometimes called “reports” when they are merely suggestions for reports, has led, I think, to the whole confusion in this matter. They were the basis of a report, but there was only one report and that was prepared by the commissioners themselves and it embodied some of the material that Turner, Fox, and Brossard had prepared, and in other respects it varied from it according to the discretion of the commissioners.

When Mr. Fox was asked who did the dictating of these suggestions, he replied that Doctor Turner usually did the dictating, but when they got to the difficult part of the drafts they all took a hand at it, and then they would revise the product, and so it was impossible to tell to which of these experts should be ascribed any particular sentence of importance; that the three of them worked together as a team in making up this collection of suggestions to submit to their superiors.

There is the whole issue in this case. That being the fact, was it insincere or evasive or false on the part of Brossard, who had testified that he was in full charge of this investigation and that he had made up tables showing this and that and the next thing, and other material which he offered to put in the record and which was declined? Having testified to all that, was it evasive of him to say in reply to Senator LA FOLLETTE the answer which I have read?—

Senator LA FOLLETTE. Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of the tables to which you referred in your testimony yesterday?

Mr. BROSSARD. As an agricultural expert on the staff of the commission; yes, sir, Senator.

That was said by the man who had just been describing in detail what he did, who had just offered to our committee to put into our record the material he had prepared and we had declined it. It is summed up with that question and that answer. I do not think that indicates the slightest desire to escape responsibility for what he actually did. I do not think it indicates insincerity or evasiveness or falsehood.

Many of us have spent our lives trying cases in court. We know how much a witness is at a disadvantage after he has testified at great length if one lawyer or another puts a sort of sweeping summarizing question to him and he answers it “Yes, sir,” or “No, sir.” The witness has previously told the whole truth as he knows it, and if the final catchall question is not so phrased as to cover all of the facts one can not say it is the fault of the lawyer, but, at least, it is not the fault of the witness. That is what occurred in this case. There was not the slightest desire on the part of the Senator from Wisconsin [Mr. LA FOLLETTE] to mislead Mr. Brossard or to trick him into an answer inconsistent with

what he had testified. I know I never thought that to be the case, and I do not think the witness thought so. He had previously given the details of his employment, and it was very natural for him to sum it all up by saying, as he did in that answer, that his service was that of an agricultural expert and his duty was limited to that. The question is narrower than the answer was apparently meant to be. As the question was worded it was:

Then you wish to leave this committee with the impression that the only part which you had with regard to the minority opinion in the sugar report was the submission of tables to which you referred in your testimony yesterday?

If he had answered that flatly, “Yes, sir,” it would have been incorrect, because he submitted more than tables. He had told of a number of things other than tables in his testimony of the day before, and, as I say, had offered all the other things for inclusion in the record; but the question was narrowed down to the exclusion of everything but tables, and the witness answered it—

As an agricultural expert on the staff of the commission; yes, sir.

I do not think a fair construction of that question and that answer can indicate to any one of us a disposition to conceal anything or evade responsibility. After that contradiction, if it is a contradiction, was brought out, there was another question raised as to a suggested effort on the part of Brossard to induce Fox to amend his testimony so as to agree with Brossard's statement, and there again the first mention of it as it was brought out from the witness Fox sounded as if Brossard had gone to him and tried to get him in some way to shade the truth or swerve his answer so as to conform with what Brossard had said and not conform exactly with the facts; but that was pretty well exploded by the testimony of Mr. Fox himself when he was squarely asked whether there was any such intention apparent and he directly denied that there was. At pages 142 and 143 of the Finance Committee hearings, while Mr. Fox was testifying before the Finance Committee, he was asked by Senator SIMMONS this question:

Senator SIMMONS. The reason for his anxiety to sound you out was to bring about a reconciliation of your subsequent testimony to his testimony already given?

Mr. Fox. As to that I am not sure. I think Doctor Brossard knew me well enough to know that I could not be easily influenced.

Senator BINGHAM. Did you get the impression at all that he was trying to influence you?

Mr. Fox. I did not.

Senator BINGHAM. Merely that he was trying to find out what your recollection was?

Mr. Fox. That is true.

Then he continues at somewhat greater length and reiterates the same statement. Fox testified in the same way before the Tariff Commission investigation five years ago. At pages 1062 and 1063 of the record of that hearing this statement was made by the chairman:

Now, it develops that even in April, long before the time he was called to testify, Doctor Brossard went to this witness and tried to reach an agreement with him as to what their testimony should be respecting that important subject, and I rule that the first memorandum is even more significant than the later ones. Do you object to its competency?

Senator WADSWORTH. I have not objected to its competency at all.

Mr. Fox. I regret exceedingly to have brought that in.

Chairman ROBINSON. You need not apologize for it. I would have asked for it if I had known you had it, or if your answers had reflected the fact that long prior to his testimony you were talking about what you and he should testify about that particular fact.

Mr. Fox. Oh, Mr. Senator, I never interpreted that conversation—

Chairman ROBINSON (interposing). I am not asking you for your interpretation.

Senator WADSWORTH. I will ask him. What was your interpretation of that conversation? Was it simply about what the chairman of this committee has indicated?

Mr. Fox. I should say not.

Senator WADSWORTH. Very well.

Mr. Fox. I have never interpreted that conversation as an attempt on Doctor Brossard's part to reach an agreement. I had no such proposition in mind—



And so on. That is the second branch of the case.

Mr. COPELAND. Mr. President, will the Senator from Pennsylvania yield to me?

The PRESIDING OFFICER (Mr. METCALF in the chair). Does the Senator from Pennsylvania yield to the Senator from New York?

Mr. REED. I yield.

Mr. COPELAND. I have been engaged in a committee and have not had the benefit of the speeches previously made. Is there a double charge here, in the first place, that Mr. Brossard may have had a part in formulating the minority report which recommended an increase in the rates of duty on sugar; and, secondly, that he sought to evade responsibility for any such part as he may have had in it?

Mr. REED. I do not so understand, Mr. President.

Mr. ROBINSON of Arkansas. Mr. President, if the Senator from Pennsylvania will permit me, I think that is exactly true. The record is very voluminous, but Mr. Brossard's testimony shows an utter desire to avoid being frank. He had a perfect right to perform the service which he did perform in connection with the sugar report, but for some reason he started out by denying any part in it, explaining that his work was merely that of a scientist collecting data. The record here runs over a hundred pages where he was asked question after question, and his answers, as stated by the Senator from Wisconsin [Mr. LA FOLLETTE], were, in my judgment, lacking in frankness. The record shows also that in the opinion of Fox, the expert of the commission, they were lacking in frankness, because he went back to his office and made memoranda, the clear implication of which was that the statements in Mr. Brossard's testimony with respect to the part which he played in connection with the sugar report were untrue, or quite inaccurate, to say the least; and after that Mr. Brossard came to him and wanted to reach an agreement as to what their testimony should be, to get the facts straight, as he says, and the Fox memoranda indicate that at the time he made the memoranda he thought Mr. Brossard was trying to influence him in the testimony that he should give before the committee. If I can not convince the Senate of that, of course, it is perfectly fair—

Mr. REED. I will ask the Senator to do so in his own time.

Mr. ROBINSON of Arkansas. But I make that statement in order that the Senator from Pennsylvania himself may not misunderstand my theory of the issue upon which question as to Mr. Brossard's right to serve as a commissioner has been based.

Mr. REED. I thank the Senator for his statement. I think it confirms my impression that nobody pretends that what Brossard did was improper. It is only claimed that there was an attempt on his part to conceal it when he testified before the committee. What he did seems to be pretty clearly understood now.

Mr. ROBINSON of Arkansas. Will the Senator pardon a further interruption?

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield further to the Senator from Arkansas?

Mr. REED. I do.

Mr. ROBINSON of Arkansas. It was not improper, provided he did so openly and took the responsibility for it, but the effort to divest himself of responsibility indicates that in his own mind he was taking a questionable course.

Mr. REED. Whatever may be the inference drawn from that as to his state of mind, I have not yet heard anybody claim that what he actually did in the way of assisting Mr. Marvin and Mr. Burgess was in any respect improper. The whole thing narrows down to the question whether the testimony before the Senate committee was or was not a candid statement by him of what he had done and what his participation was. I am trying to show that, to my mind at least, it was completely fair.

Mr. BARKLEY. Mr. President—

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield to the Senator from Kentucky?

Mr. REED. I yield.

Mr. BARKLEY. Touching the propriety of what Mr. Brossard did, of course he was at that time a subordinate; he was not a member of the Tariff Commission; he was a so-called expert engaged in the work of collecting information on the sugar situation. So long as his services were confined to the submission of expert information to the commission, I think it might be said that he acted within the proprieties; but in so far as he went beyond that and undertook to influence their judgment as to the manner in which they should use the information which he had submitted to them, I think it may be open to doubt whether he acted with propriety.

Mr. REED. We need not waste any time in groping around for the facts in that regard, because exactly what he did is printed in the testimony of the so-called Robinson committee. Perhaps it will help the Senate if I will read the concluding paragraph of the material submitted by Doctor Brossard and then the concluding paragraph of the material submitted by Marvin and Burgess, so that the Senate may for itself see how different was Brossard's output from that of the two commissioners who submitted the report.

Mr. HARRISON. Mr. President, before the Senator undertakes to do that will he answer a question?

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield to the Senator from Mississippi?

Mr. REED. Yes.

Mr. HARRISON. There is not any doubt that Mr. Brossard, in answering the question of Chairman ROBINSON directed to him before the select committee, "Did you participate in the report?" he replied he had not done so. Is not that right?

Mr. REED. That is perfectly correct.

Mr. HARRISON. The record shows that he said he did not have anything to do with it.

Mr. REED. That is right.

Mr. HARRISON. He answered in response to a further question that he had nothing to do with it. Is not that right?

Mr. REED. No; that is not right. He said he was in complete charge of the investigation.

Mr. HARRISON. If the Senator will read from the record, I think he will find that statement.

Mr. REED. I will read from the record.

Mr. LA FOLLETTE. Mr. President, will the Senator yield to me for a brief interruption?

Mr. REED. I yield.

Mr. LA FOLLETTE. The Senator has on several occasions referred to the beet-sugar investigation of which Doctor Brossard was in charge. Of course, that investigation was not directly ordered under the power of the commission in connection with the flexible provisions of the tariff law, but was conducted under the general powers of the commission. Of course, however, as the question of the final report under the flexible provisions came up, naturally, having conducted the investigation under the general powers, Mr. Brossard's opinion was solicited by certain members of the commission on the question of the relation of the beet-sugar costs and the data which he had gathered to the other investigation.

Mr. REED. Precisely. The report of Messrs. Marvin and Burgess contrasts the beet-sugar costs in the United States with the Cuban costs of producing cane sugar.

Mr. HARRISON. Mr. President—

Mr. REED. Just a moment. I do not want to be interrupted until I shall have shown the Senate just how radically different Brossard's suggested report was from the final report, which he says he never wrote and never read, but which he is charged with writing only by inference and not because of any evidence.

Here is the way Brossard finishes his report, the one in which he and Turner and Fox collaborated.

Mr. COPELAND. What page, please?

Mr. REED. I am reading now from page 1143. The final statement in that suggested report is this:

Although this difference—



Contrasting beet and cane sugar, now—

calls for a slight increase in the rate of duty, the validity of any change is questioned by reason of the fact that the commission is not in possession of a sufficient body of agricultural costs to warrant a rate adjustment to equalize the differences in costs of production in this industry which is primarily an agricultural industry.

Those are the words for which Brossard is responsible—this man who is charged with being a tool of the sugar industry. Here is what the commissioners recommended in the report which they filed with the President. This is their concluding paragraph—

Mr. ROBINSON of Arkansas. What page?

Mr. REED. Page 1157—giving several suggested rates.

Mr. COPELAND. Mr. President, will the Senator yield, just to make the matter clear?

Mr. REED. Yes.

Mr. COPELAND. The Senator read the last paragraph on page 1143. Is that the language used by Mr. Brossard?

Mr. REED. That is the language in the suggested report which was submitted by Brossard, Turner, and Fox. Nobody knows who wrote that paragraph.

Mr. COPELAND. This was not the final report of the commission, but was the tentative report prepared by these experts in the commission?

Mr. REED. Exactly.

Mr. COPELAND. Joined in by Mr. Brossard?

Mr. REED. Exactly; just exactly as the Senator's own clerk might prepare a letter for signature which the Senator himself would disregard or discard entirely, and replace by one that he dictated himself; and if the Senate will turn to page 1157 it will see that substantial and material increases in the tariff were recommended by Marvin and Burgess. So their recommendations were entirely unlike the recommendations of these experts who had submitted the suggested report to them.

Those are the facts. It is impossible to say with any accuracy that Brossard had anything to do with the report that went to the President, because, as I say, he did not write it and he did not read it, and nobody pretends that he did either. He did not take part with the other experts in the compilation of a great mass of statistical material and in the preparation of these tentative but disregarded suggestions for a report.

It seems to me, Mr. President, that although sugar seems to be dynamite—the very mention of sugar in the Senate seems to make us all expect something sinister—the activities of this man were nothing more than those of a faithful scientist and expert employed by the commission; that the temperance apparent in the two or three suggested reports that they made—they made another one six days before this one, which the commissioners rejected, and told them to do it over again—the temperance shown in both of them is commendable rather than discreditable; that what Mr. Brossard did was entirely innocuous, and everybody must admit it; and that a fair reading of the testimony shows no disposition on his part to conceal the activity that he took in the course of that investigation. It is preposterous to think that he would have wanted to conceal it. There were Turner and Fox and the woman stenographer who had stayed there and worked with them. These papers that they had filed were still in existence. Why should a man attempt to conceal something which in itself was not at all discreditable?

I will confess that as the five of us showered questions on the witness—some of them leading questions, like this last one which was quoted, a catchall question after he had testified for page after page of the record—a literal reading of that question and answer would indicate that he had filed nothing but tables with these commissioners; but he had just a short while previously said that there was a mass of other material and had offered it to us to put into our record, and we had declined it; and it scarcely lay with us to say that the man had not told us everything when he had offered a lot of stuff which we had refused to accept. Yet that is the position in which we put ourselves when we say that he was not frank in telling us what he had done.

With open hands, he says, "Other material that I prepared is here for your inspection and your record if you want it"; and we say, "No; we do not want it." Then, presently, on the strength of a summing-up question asked by one of us, which restricts his activities to tables, we say that he was not candid.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

Mr. REED. I yield.

Mr. ROBINSON of Arkansas. Doctor Brossard's position all the way through was that Turner and others prepared the so-called memorandum draft for a report, and that he had no part in that. The Senator himself is now confusing Doctor Brossard's testimony, if he will pardon me.

Mr. REED. I do not recall any statement whatever by him that he had no part in it.

Mr. ROBINSON of Arkansas. Over and over he claimed that he was not even present when those who did make that draft participated in making it.

Mr. REED. No; I do not remember any such statement.

Mr. ROBINSON of Arkansas. Yes; that was his first statement—that he had no part in the preparation of the draft which went to Messrs. Marvin and Burgess as in the nature of a suggestion for the form of their report. The significance of it was that at the time he was testifying, his name was before the Senate for confirmation, and he was blowing hot and cold on the proposition; and, as I think the whole record shows, anyone who reads it will reach the conclusion—except, perhaps, one who has already formed a contrary conclusion—that he was not frank in his statements.

Mr. REED. That is just where we differ. I think that in fairness to Brossard we have to take into account the things he did before this question was brought up. He tells us plainly, at page 1078 of the record, that he had in his hand these very tentative reports at the time he told us about the other material, and offered to put it in the record. He says it was literally in his hand there at the witness table. Here are his words:

Now, right there I want to say that what I had reference to there as "other material" I had in my hand then and exhibited here, you will remember, I think, very definitely, I think every memorandum of mine that Mr. Fox has submitted in his testimony. Every single one, with one exception as I remember it, as my contribution, and that exception is the one that is in here now, Exhibit 12.

That is not important.

Mr. ROBINSON of Arkansas. Yes; but the Senator sees that Doctor Brossard there is talking about memoranda that he himself prepared on the special studies that he had made, and that had no relation to the so-called first and second drafts of report that this group of experts were preparing for Messrs. Marvin and Burgess, and which actually became the basis of their report, although they revised it.

Mr. REED. Well, now, just suppose the man had tried to conceal that when he was up for confirmation. He was taxed with being an advocate of the sugar interests and that very report was so temperate, so mild in its recommendations, that it would have helped him rather than hurt him. He had nothing to conceal in that.

I did not finish reading what he stated:

Every single one, with one exception, as I remember it, as my contribution, and that exception is the one that is in here now, Exhibit 12, marked as having been prepared by Dean Turner and myself, which I did not have a copy of, because there was only one copy made and that was kept in the files of the economics division by the chairman of the advisory board, Doctor Turner.

That is what he meant by "other material."

Mr. HARRISON. Mr. President, will the Senator yield?

Mr. REED. Yes.

Mr. HARRISON. That is his statement when he is trying to offer some excuse, following his first statement, when the question was put to him:

Did you participate in the report?

And he said, "No."



Then we brought Mr. Fox before him, and Mr. Fox contradicted him; and now Mr. Brossard is testifying after that, trying to make some excuse for his misstatement.

Mr. REED. Fox did not contradict him. Neither Fox nor any other living witnesses—or dead one, for that matter—said that Brossard had anything to do with the preparation of the report of Marvin and Burgess that went to the President; and that is what he was asked about.

Mr. LA FOLLETTE. Mr. President, I challenge that statement.

Mr. HARRISON. Mr. President, will the Senator permit me to read just a few words in connection with what he says?

Mr. REED. Certainly.

Mr. HARRISON. This is Mr. Fox, from his memorandum that he gave to the committee. He says:

Doctor Brossard also stated that we did not write the minority report; that "we wrote the experts' report," whereupon I told him that we wrote the report for Mr. Marvin and Mr. Burgess and that no "experts' report" was prepared in either case.

Mr. REED. Yes; and there again they are mixed up. There was no advisory board report, which is usual, but there was a report and suggestions made by these experts; and the very reports themselves show that Doctor Fox's statement can not be interpreted in that way, because the reports are so different.

This testimony is so long that it is very hard to find the particular matters referred to; but Brossard finally gave us this information as to the number of different papers there were that might have been called reports. He says:

In my own mind that distinction between (1) the experts' report, (2) tentative drafts of the exports' report, (3) tentative drafts of the minority opinions or the minority sugar report, (4) the minority opinion or the minority sugar report as it was signed by Commissioners Marvin and Burgess, and (5) the supplemental reports on sugar prepared in compliance with the President's requests for additional information—the distinction between those separate entities is absolutely essential, and that was the reason I made the distinctions in my testimony here, so that it would be perfectly clear.

We did not make the distinctions in our questions, and our questions caused a great deal of confusion, because I, for one, did not know there were so many different papers that might have been called reports; and if our questions were confused, that was not the witness's fault; it was ours.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. REED. I yield.

Mr. COPELAND. The Senator has quoted from page 1143, and has given us the impression that that is the statement of the joint committee of experts. I find, by following back to page 1129, that the last paragraph which he has just mentioned is a report from Exhibit No. 17.

Mr. REED. That is correct.

Mr. COPELAND. And in brackets it says:

[Submitted by Commissioners Thomas O. Marvin and William Burgess.]

Am I right in the understanding which I have in my mind that this Exhibit No. 17 was a proposed, a tentative draft of a report prepared by these three experts for the consideration of these commissioners?

Mr. REED. That is exactly correct. It never was, in fact, submitted to the President.

Mr. COPELAND. No. This was prepared, as is the custom in every executive office, by underlings, but gotten ready for the head of the department. So this Exhibit No. 17 was the report prepared by the experts, including Mr. Brossard?

Mr. REED. That is right.

Mr. COPELAND. And the conclusion found on the bottom of page 1143 is as I quote:

Although this difference calls for a slight increase in the rate of duty, the validity of any change is questioned by reason of the fact that the commission is not in possession of a sufficient body of agricultural costs to warrant a rate adjustment to equalize the differences in costs of production in this industry, which is primarily an agricultural industry.

That, then, as I understand the Senator from Pennsylvania, is testified to as the belief of Mr. Brossard at the time

he, in company with these other experts, prepared this tentative report.

Mr. REED. I do not know whether it was his belief or not. It was prepared by him for submission to these commissioners.

Mr. COPELAND. In any event, this is the only report in which he participated?

Mr. REED. Oh, no.

Mr. COPELAND. I mean as regards the final report to the President.

Mr. REED. Oh, no. Four days before, on July 26, these same experts had prepared a tentative report, which the Senator will find as Exhibit No. 16, beginning on page 1122. The commissioners got that, but did not like it and sent it back to the experts, and Exhibit No. 17, from which we have been reading, was the second effort by the experts to produce what the commissioners wanted. That was not successful either, and then the commissioners themselves prepared Exhibit No. 18, which was the report submitted to the President.

Mr. COPELAND. And it was that report in which an increase of rate was proposed?

Mr. REED. Precisely.

Mr. COPELAND. A report which was not participated in by Mr. Brossard?

Mr. REED. Not at all; not by any of the experts. It was done by the commissioners themselves. I do not mean that they did not embody in it a lot of the material given them by their scientists. Of course they did. But the conclusions and the recommendations were theirs alone, and not those of the experts.

Mr. COPELAND. Mr. President, the matter seems to be rather confusing to me for some reason as I look at the end of the final report to the President, appearing on page 1157. Will the Senator point out where there was recommended an increase in the rate?

Mr. REED. It is confusing.

Mr. COPELAND. I think they muddled it up a little. That is the way it looks to me. I do not see a clear-cut statement there that they actually proposed an increase in the rate.

Mr. REED. It is in the concluding paragraph. The Senator will notice that in five or six preceding paragraphs they state differences in cost of production.

Mr. COPELAND. Yes.

Mr. REED. The recommendation, as far as the report carries one, is in the final paragraph, in which it is stated that it is necessary that the costs of production of two particular crop years should be used as a basis of comparison. If that recommendation is followed, the increase in duty necessarily results.

Mr. COPELAND. That, of course, was the recommendation of the minority of the commission, founded, perhaps, upon material which had been gathered from various sources, but it was the independent opinion of the commissioners.

Mr. REED. Exactly.

Mr. COPELAND. And could not be attributed to Mr. Brossard.

Mr. REED. Of course, when we talk about majority and minority of the Tariff Commission, we have to remember that the majority vote carries no particular influence with the President. The President was perfectly free under the law to adopt the opinion of a minority of one if he wanted to. As a matter of fact, he did so in the cotton-glove case. In that case Commissioner Dennis, as I recall it, filed a minority opinion of one, while all the other members of the commission filed a contrary opinion, and the President saw fit to adopt Commissioner Dennis's minority opinion as his own as the basis of his action.

Mr. President, just one word in conclusion. Let us look at the essential fairness of this thing. We all know Brossard. Most of us have observed him before committees. He has been up at the Capitol many times in response to our summons. We know that he is an intelligent, well-educated, experienced scientist, with particular training in matters of farm accounting and farm economics, a man whose value is



obvious, a man whose experience is difficult to replace. He is of tremendous use on the Tariff Commission, and will be in the future just because of his background of knowledge of scientific agriculture.

His bearing has been candid. He has answered our questions frankly. I am not now speaking of this particular investigation but of our general experience with him. We can get accurate, definite information from him whenever we put him on the stand. He is a valuable man in the place he is occupying, and it seems to me that, altogether apart from quibbles over Senator LA FOLLETTE's question and Mr. Brossard's answer, and things like that, our knowledge of the man and our need for men of that sort is sufficient to require his confirmation.

The PRESIDING OFFICER (Mr. COUZENS in the chair). The question is, Shall the Senate advise and consent to the nomination of Commissioner Brossard?

Mr. ROBINSON of Arkansas obtained the floor.

#### EXECUTIVE MESSAGES REFERRED

Messages in writing from the President of the United States, submitting nominations, were referred to the appropriate committees.

#### RECESS

Mr. McNARY. I move that the Senate take a recess until 12 o'clock to-morrow.

The motion was agreed to; and the Senate (at 4 o'clock and 50 minutes p. m.) took a recess until to-morrow, Tuesday, January 13, 1931, at 12 o'clock meridian.

#### NOMINATIONS

*Executive nominations received by the Senate January 12 (legislative day of January 5), 1931*

##### COAST GUARD

Lieut. (Junior Grade) (Temporary) John S. Merriman, jr., to be a lieutenant (temporary) in the Coast Guard of the United States, to take effect from date of oath.

#### REAPPOINTMENTS IN THE OFFICERS' RESERVE CORPS OF THE ARMY

##### GENERAL OFFICERS

*To be brigadier generals, reserve*

Brig. Gen. Brice Pursell Disque, reserve, from February 17, 1931.

Brig. Gen. Hugh Samuel Johnson, reserve, from April 11, 1931.

#### CONFIRMATIONS

*Executive nominations confirmed by the Senate January 12 (legislative day of January 5), 1931*

##### MEMBERS OF THE UNITED STATES TARIFF COMMISSION

Henry P. Fletcher to be a member for the term expiring June 16, 1936.

Thomas W. Page to be a member for the term expiring June 16, 1935.

John Lee Coulter to be a member for the term expiring June 16, 1934.

Alfred P. Dennis to be a member for the term expiring June 16, 1933.

## HOUSE OF REPRESENTATIVES

MONDAY, JANUARY 12, 1931

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

We would say, our Father in Heaven, "Still, still with Thee." We thank Thee for the hand that reaches down to the one who falls and for the hand that reaches out to the one who climbs. Along with Thee help us to live simple, contented, trustful lives. Lead us on, blessed Lord, with fatherly care, for no word ever spoken dies away in silence

and no deed ever falls fruitless to the ground. Oh, may we do our work well and exemplify the excellence of our faith in a living, merciful God. Amen.

The Journal of the proceedings of Saturday was read and approved.

#### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Latta, one of his secretaries.

#### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed without amendment a bill of the House of the following title:

H. R. 11201. An act to authorize a preliminary examination of the Fox River, Wis., for the purpose of flood control.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 255. An act for the promotion of the health and welfare of mothers and infants, and for other purposes.

The message also announced that the Senate had agreed to the amendment of the House to the concurrent resolution (S. Con. Res. 34) to pay the Sussex Trust Co. a sum equal to six months' compensation of the late Napoleon B. Hearn.

#### DROUGHT RELIEF

Mr. SNELL, from the Committee on Rules, submitted the following report for printing in the RECORD:

##### House Resolution 334

*Resolved*, That immediately upon the adoption of this resolution the joint resolution (H. J. Res. 447) entitled "Joint resolution making an appropriation to carry out the provisions of the public resolution entitled 'Joint resolution for the relief of farmers in the drought and/or storm stricken areas of the United States,' approved December 20, 1930," with Senate amendments thereto be, and the same hereby is, taken from the Speaker's table to the end that all Senate amendments be, and the same are, disagreed to, and a conference is requested with the Senate upon the disagreeing votes of the two Houses.

Mr. LaGUARDIA. Mr. Speaker, I ask unanimous consent to put in the RECORD some time during the day, for the information of the House, a motion to instruct the conferees which I shall offer whenever this rule is called up.

The SPEAKER. The gentleman from New York asks unanimous consent to insert in the RECORD a motion he proposes to make by way of instruction to the conferees on this bill. Is there objection?

Mr. BANKHEAD. Mr. Speaker, reserving the right to object, and I shall not object, but I assume that the gentleman is proceeding upon the theory that under the rule which was adopted this morning by the Committee on Rules, which provides that this bill shall be sent to conference after disagreeing to the Senate amendments, the gentleman will exercise his parliamentary right to offer this as a privileged motion to instruct the conferees before the conferees are appointed.

Mr. LaGUARDIA. Exactly; with an amendment.

Mr. BANKHEAD. An amendment to what?

Mr. LaGUARDIA. To instruct the conferees to concur in the Senate amendment with an amendment.

Mr. PARKS. When? Does the gentleman from New York imagine they will bring that back before the 4th of March?

Mr. LaGUARDIA. I have no way of telling.

Mr. BANKHEAD. I shall not object.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. LaGUARDIA. Mr. Speaker, under leave granted me I submit herewith a motion to instruct conferees on the drought relief bill, which I shall endeavor to offer and submit to the House for consideration as soon as it may be parliamenterarily possible to be recognized for such purpose:

I move that the House conferees be instructed to concur in the Senate amendment providing for food distribution with an amendment eliminating all limitations as to classes, occupation, or residence of persons entitled to receive the food provided for in said Senate amendment.



## POINT OF NO QUORUM

Mr. PARKS. Mr. Speaker, I make a point of order, if I may be permitted.

The SPEAKER. What is the gentleman's point?

Mr. PARKS. This is a most important matter and I really believe that a quorum ought to be here. I make the point of order that a quorum is not present.

The SPEAKER. The gentleman from Arkansas makes a point of order that a quorum is not present. Evidently, a quorum is not present.

Mr. LAGUARDIA. Will the gentleman withhold that temporarily?

Mr. PARKS. I withhold it for the gentleman from New York, who, I think—

The SPEAKER. The Chair has already announced that a quorum is not present.

Mr. TILSON. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

(Roll No. 11)

Auf der Heide	Dickinson	Johnson, Nebr.	Perkins
Bacharach	Dickstein	Johnson, S. Dak.	Pratt, Ruth
Baird	Dorsey	Johnson, Wash.	Ramey, Frank M.
Black	Doughton	Johnston, Mo.	Reid, Ill.
Blackburn	Douglas, Ariz.	Kemp	Rowbottom
Brand, Ohio	Douglass, Mass.	Kendall, Ky.	Short
Britten	Doyle	Kiefner	Sirovich
Browne	Drewry	Kunz	Sloan
Brunner	Dunbar	Kurtz	Smith, W. Va.
Buckbee	Fitzpatrick	Langley	Somers, N. Y.
Butler	Garber, Va.	Lea	Stevenson
Cable	Garrett	Leach	Sullivan, Pa.
Campbell, Iowa	Golder	McCormack, Mass.	Swing
Canfield	Goss	McCormick, Ill.	Taylor, Colo.
Carley	Griffin	McLeod	Thompson
Carter, Wyo.	Guyer	Magrady	Treadway
Celler	Hale	Mead	Underwood
Chase	Hall, Ill.	Menges	Wainwright
Clague	Hoffman	Michaelson	Walker
Clancy	Hopkins	Montet	Watson
Connolly	Hudspeth	Newhall	Welsh, Pa.
Corning	Hull, William E.	Nolan	Williams
Craddock	Igoe	Norton	Willson
Crisp	James, Mich.	O'Connor, La.	Wolfenden
Culkin	James, N. C.	O'Connor, Okla.	Zihlman
Cullen	Johnson, Ill.	Oliver, N. Y.	
Dempsey	Johnson, Ind.	Palmer	

The SPEAKER. Three hundred and twenty-four Members have answered to their names; a quorum is present.

Mr. TILSON. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to.

## REVISION OF THE COPYRIGHT LAW

Mr. VESTAL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 12549) to amend and consolidate the acts respecting copyright and to permit the United States to enter the International Copyright Union.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. HOCH in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. The Chair will state that when the committee had this bill under consideration on June 28, 1930, and the committee rose, the Clerk had concluded the reading of section 9. An amendment had been offered and unanimous consent had been entered into that debate on that amendment and all amendments to the section should close in five minutes. The gentleman from Indiana had reserved a point of order on the amendment.

Mr. COCHRAN of Missouri. Mr. Chairman—

The CHAIRMAN. For what purpose does the gentleman from Missouri rise?

Mr. COCHRAN of Missouri. I rise for the purpose of asking unanimous consent that the House permit the gentleman from Indiana [Mr. VESTAL] to speak for 10 minutes and the gentleman from Mississippi [Mr. BUSBY] to speak for 10 minutes and let them tell us how the measure now stands and what amendments have been adopted. It has

been six months since we considered this bill. Only a few Members know what the bill contains.

Mr. LANHAM. Reserving the right to object, it seems strange to me that the gentleman from Missouri should call for that information from Members not members of the committee having the bill in charge. I can say very briefly that in the first place we have reached section 9 of the bill. There is an amendment pending offered by the gentleman from Mississippi [Mr. BUSBY]. To that amendment it is my desire to make a point of order. It seems to me the gentleman's request might be deferred until the consideration of that point of order.

Mr. COCHRAN of Missouri. Mr. VESTAL is for the bill; Mr. BUSBY against it. It has been six months since the bill was considered. Since that time I venture to say that 500,000 letters have reached Members of this House concerning this measure. All I ask is that the Members be advised what occurred in the way of amendments six months ago.

The Members should be advised what happened to the first eight sections. If you do not desire to enlighten the House, I will withdraw the request.

Mr. LANHAM. This bill comprises but 52 pages, and we have reached page 8. The remainder of it is to be considered under the 5-minute rule.

Mr. PARKS. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. PARKS. I understood there is a point of order reserved against the paragraph now under discussion. Is that so?

The CHAIRMAN. The point of order was reserved on an amendment offered by the gentleman from Mississippi.

Mr. PARKS. I simply wanted to demand the regular order.

The CHAIRMAN. Does the gentleman from Texas desire to make his point of order?

Mr. LANHAM. I do.

The CHAIRMAN. The Chair will hear the gentleman.

Mr. LANHAM. Mr. Chairman, the amendment offered by the gentleman from Mississippi is to section 9 of the bill, beginning on page 8. This amendment has to do with the assignment of copyrights and with the assignment of various interests in copyrighted works.

I make the point of order that the amendment offered by the gentleman from Mississippi to section 9 is multifarious, not germane to the section to which it is offered, and on that I desire to be heard very briefly.

The first paragraph of the amendment offered by the gentleman from Mississippi has to do with the assignment of copyrighted works and, in my judgment, is germane, but the succeeding paragraphs are, I think, not germane. The second paragraph of the gentleman's amendment provides that every assignment of a copyright executed in a foreign country shall be acknowledged, and so forth, and pertains to the manner of the execution of assignments in a foreign country. That subject is considered in the pending bill under section 11, on page 12, and is not germane to section 9, to which it is offered.

The third paragraph has to do with the necessity for the recordation of assignments of copyrighted works, and that subject is dealt with in the pending bill under section 10, on page 9, and is not germane to section 9.

The next paragraph has to do with the issuance of a certificate of record; also to the method of the registration and the fee therefor. Under the pending bill, the subject of the registration and the fee therefor is considered under section 36, on page 35. The matter of the return of the assignment with the certificate is considered in section 58, on page 48, and that paragraph is not germane to section 9, to which it is offered.

The next paragraph has to do with the notice of copyright. The subject of the notice of copyright is considered in the pending bill under section 34, on page 33, and that part of the amendment is not germane to section 9.

The next paragraph has to do with the preservation and keeping of the records, that they shall be under the control



of the register of copyrights. That matter is dealt with in the pending bill in section 58, on page 44, and section 52, on page 46, and that paragraph is not germane to section 9 of the pending bill. The last paragraph of the gentleman's amendment provides that the copyright is distinct from the property in the material object copyrighted, and so forth, and the subject matter outlined in that paragraph of the gentleman's amendment is contained in section 6, on page 7 of this bill.

So I make the point of order, Mr. Chairman, that in view of the fact that all of the matters mentioned in this amendment, with the exception of that stated in the first paragraph, are considered under other and different sections of the pending bill, the amendment of the gentleman from Mississippi is multifarious and not germane to section 9.

Mr. GLOVER. Mr. Chairman, I ask unanimous consent that the amendment of the gentleman from Mississippi may be again reported.

The CHAIRMAN. Without objection, the Clerk will again report the amendment of the gentleman from Mississippi.

The Clerk read as follows:

Amendment by Mr. BUSBY: Page 8, line 14, strike out section 9 and insert in lieu thereof the following:

"That copyright secured under this or previous acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

"That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

"That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

"That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

"That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this act.

"That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

"That the copyright is distinct from the property in the material object copyright, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained."

Mr. BUSBY. Mr. Chairman, I call the attention of the Chair to the fact that the bill that we have before us is an entire rewriting of the copyright law of this country. It is not merely a proposal to amend a portion of the copyright law but it is submitted to this Congress as a complete substitute, not only for the copyright law as written on the statute books but for the court decisions that have construed the rights that have arisen under our present law. That thing alone will have considerable to do with the question of whether or not an amendment offered is germane to the bill or to the section where it is proposed to offer the amendment. The subject we are considering under section 9, to which my amendment is offered, is the subject of assignment of copyright. It provides that the author or other person may assign or sell all or any portion of a copyright as if it were divisible—as if it were many things, instead of one thing as it is. The section in the bill proposes that every use to which a copyrighted article, composition, or other thing that is capable of being copyrighted may be put can be assigned. In other words, one

man might buy the right to publish an article or a novel in a book form, another in a magazine form, and another for the purpose of dramatizing it, or some one may buy the right to whistle a copyrighted tune, and every conceivable use to which it may be put is being proposed in the question which we are now considering in the present bill. My amendment deals with that same proposition. It covers the same field. The present law provides for the assignment of copyrights in a very definite and carefully considered manner. It is proposed that we strike out this chimerical, indefinite, far-reaching, and indeterminable proposition proposed in the bill and insert something definite, tangible, and certain, and that is the present law.

The point of order raised is that this amendment is not germane. Anything that is germane to an orderly assignment of a copyright would be germane to this bill at this section, because this section is proposing an entirely new thing in this field. They say that there are other sections in the bill that will be considered that will cover the same ground that my amendment covers. I am offering this amendment with the proposal, if adopted, to strike out these inconsistent clauses as we reach them. I read now from section 777 of the rules of the House wherein it is stated that—

No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

However, we go on down and find under the precedents under that same section—

That an amendment germane to the bill as a whole but hardly germane to any one section may be offered at any appropriate place, with notice of motions to strike out the following section that it would supersede.

That is exactly the situation we have confronting us. As we reach those sections we will strike out those that are inconsistent with the plan that is proposed for assignments instead of the section of the bill that I am asking to strike out.

Mr. LA GUARDIA. Will the gentleman yield?

Mr. BUSBY. I yield.

Mr. LA GUARDIA. Does not that last concession of the gentleman sustain the point of order made by the gentleman from Texas [Mr. LANHAM]?

Mr. BUSBY. Certainly not. How do we know what is in a bill that has not been read?

Mr. LA GUARDIA. I think there is a presumption of knowledge of what is in the bill when the gentleman offers the amendment.

Mr. BUSBY. I understand that, but I am offering this with the proposal to strike out the inconsistent provisions of the bill, which are covered by the amendments, as they are reached.

Mr. CHINDBLOM. Mr. Chairman, the only question before the Chair, in my humble opinion, is whether the amendment proposed by the gentleman from Mississippi [Mr. BUSBY] is, in whole or in part, germane to section 9, to which the amendment is offered. The fact that some of the things in the proposed amendment may be covered elsewhere further on in the bill has no bearing whatever upon the subject.

Mr. LANHAM. Will the gentleman yield?

Mr. CHINDBLOM. I yield.

Mr. LANHAM. I was not urging that. I simply pointed out that those sections running through to this section which deals with assignment and assignment of interest in copyrighted work were not germane, but in pointing out that they were not germane, that they had reference to other matters, I was also stating for information at what points in the bill they do occur.

Mr. CHINDBLOM. The gentleman at least convinced me that he thought there was some force in the argument that these matters are covered elsewhere. My point is that while the committee may have chosen to divide the subject of assignment of copyrights and considered one phase of the subject in section 9 and another phase in another section upon another page of the bill, if the Committee of the Whole House chooses, it may collect all of the matters at this point, provided only that the proposal is germane to



the general subject matter of section 9. The fact that a matter may be provided elsewhere in the bill does not render a proposal for a prior insertion of that matter into the bill subject to a point of order. The Committee of the Whole House on the state of the Union may choose where it desires matters to appear, provided the amendment offered is germane.

The CHAIRMAN. The Chair is informed by the Clerk that the RECORD is inaccurate in the matter of the amendment offered by the gentleman from Mississippi [Mr. BUSBY]. The Clerk hands to the Chair the text of the amendment as it was sent to the Clerk's desk by the gentleman from Mississippi. The amendment by the gentleman from Mississippi was, "to strike out all of section 9 on page 8, to strike out page 9, pages 10 and 11 down to and including line 15 on page 12, and insert in lieu thereof the following."

The Chair will call attention to the fact that the portions of the bill which it is sought to strike out have not been read.

Mr. CHINDBLOM. Let me say that I have argued upon what appears in the CONGRESSIONAL RECORD, and also upon the amendment as read by the Clerk a moment ago; and, as the Clerk read the motion of the gentleman, it did not contain any motion to strike out.

The CHAIRMAN. The Chair just read the text as sent to the Clerk's desk by the gentleman from Mississippi [Mr. BUSBY].

Mr. CHINDBLOM. If the RECORD is not correct, we had better start afresh and have the amendment as it was offered submitted for the information of the Committee of the Whole.

Mr. BUSBY. If the Chair will permit, I had several amendments prepared, and it is likely the RECORD clerk got hold of the correct one and printed it correctly, and this is a duplicate that got into the hands of the Clerk. That is the occasion for the error.

I ask unanimous consent, Mr. Chairman, to withdraw the amendment and offer the amendment as it should have been offered and should have been received by the Clerk. I have a copy of it in my hand. Let this be substituted for the proposed amendment, which was inadvertently handed to the Clerk.

The CHAIRMAN. The gentleman from Mississippi [Mr. BUSBY] asks unanimous consent to withdraw the amendment and to offer an amendment which the Clerk will report.

Mr. BUSBY. It covers the intention which I had in mind.

Mr. STAFFORD. Under the same conditions as the former amendment as to limitation of debate.

The CHAIRMAN. Is there objection?

There was no objection.

The CHAIRMAN. The Clerk will report the amendment. The Clerk read as follows:

Amendment offered by Mr. BUSBY: On page 8, strike out all of section 9 on pages 8 and 9 and insert the the following:

"That copyright secured under this or previous acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

"That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

"That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

"That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

"That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this act."

Mr. LA GUARDIA. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. LA GUARDIA. I assume that the same point of order that was made is still pending against this amendment?

Mr. LANHAM. I renew the point of order against this amendment.

The CHAIRMAN. The gentleman from Texas [Mr. LANHAM] makes a point of order that the amendment is not germane.

Mr. BUSBY. The amendment that has been offered covers sections 9, 10, and 11, and the amendment is entirely in order if the rule be put into effect, that where an amendment is not germane to any particular section of the bill, but is germane to the bill as a whole, it can be offered to any appropriate section of the bill, with notice to move to strike out the sections that it will supersede.

I offer it with that end in view, fully confident that under the rules of the House, the amendment, curtailed as it is, and not as read from the original document, is entirely germane from start to finish.

Mr. CHINDBLOM. Will the gentleman yield?

Mr. BUSBY. I yield.

Mr. CHINDBLOM. The gentleman has forgotten the statement he made a moment ago. Of course, the gentleman's real purpose is to offer a substitute for section 9, with notice that if it is adopted he will then move to strike out certain subsequent sections.

Mr. BUSBY. Surely; and that is what I said, or intended to say—sections 10 and 11.

Mr. CHINDBLOM. May I call attention to the fact that in the amendment now before the committee the gentleman from Mississippi has omitted the last two paragraphs of his former amendment, which I will concede may have been subject to a point of order; but I insist that the paragraphs which he has now submitted are not subject to a point of order as being repugnant to the rule of germaneness.

The CHAIRMAN (Mr. HOCH). The Chair is ready to rule. This bill provides a very general revision of the copyright law. It covers the whole subject matter of the present law in a very comprehensive way. Section 9, to which the amendment has been offered, is a section dealing with the assignment of copyrights. The Chair is inclined to think that where a general revision of the law is contemplated, such as is proposed here, considerable latitude should be permitted under the rule of germaneness.

As originally offered, the Chair was of the opinion that the latter two paragraphs—as the gentleman from Illinois has just stated—which dealt with something entirely aside from the matter of assignment were not germane to a paragraph dealing with assignment.

However, while the amendment which has now been offered does extend, to a considerable degree, the provisions dealing with assignment, nevertheless it appears to the Chair to deal with the subject of the assignment of copyrights. For that reason the Chair thinks the amendment is germane to this paragraph and overrules the point of order.

Mr. CONNERY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. Under the unanimous-consent agreement five minutes of debate is permitted and the Chair feels he should recognize the gentleman from Mississippi who offered the amendment.

Mr. BUSBY. The gentleman from Missouri made a unanimous-consent request that 10 minutes be given to myself and 10 minutes to the gentleman from Indiana [Mr. VESTAL] to discuss this measure before we proceeded with the consideration of this amendment. I wonder if that request is still pending or did the Chair dispose of it?

The CHAIRMAN. If the gentleman from Mississippi desires to renew that request, or anyone else desires to renew it, the Chair will put the request.

Mr. BUSBY. I renew it.

The CHAIRMAN. The gentleman from Mississippi asks unanimous consent that there be 20 minutes of debate upon this section, 10 minutes to be controlled by the gentleman



from Indiana [Mr. VESTAL] and 10 minutes by the gentleman from Mississippi [Mr. BUSBY]. Is there objection?

Mr. LA GUARDIA. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. LA GUARDIA. We are in the Committee of the Whole and we can not control the time. Of course, the time is in the control of the Chair.

The CHAIRMAN. The Chair will put the unanimous-consent request as he understood it.

Mr. PARKS. Mr. Chairman, may I inquire how under the rules of the House we can have such unanimous consent? We are in the Committee of the Whole, with the control of the time in the hands of the Chair.

The CHAIRMAN. The time can be limited. Is the gentleman from Missouri present, so that the Chair may know exactly what his request is? The Chair understood his request to be as the Chair has stated it, and the Chair will hold that request in order.

Mr. VESTAL. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto be extended not for five minutes but for 20 minutes, and I am sure the Chair will recognize those who are for and against the amendment.

The CHAIRMAN. The gentleman from Indiana asks unanimous consent that all debate on this section and all amendments thereto shall be limited to 20 minutes. Is there objection?

Mr. CHINDBLOM. Mr. Chairman, reserving the right to object, will that include the five minutes already granted?

Mr. VESTAL. No; this request wipes that out.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none. The Chair will recognize the gentleman from Mississippi, who offered the amendment.

Mr. BUSBY. Mr. Chairman and members of the committee, we are taking up now the copyright law of this country with a view of writing a statute which will touch every person in our land. I took the time to go back and examine the circumstances under which our present 1909 copyright law was enacted, and I found that Mr. Currier, of New Hampshire, stated the situation in that time:

This is a bill which affects every household in the country.

I am offering this amendment to this section because it strikes at the very foundation of things in a copyright way. The proponents of this legislation have come to Congress asking that the entire world be given to them because they say they produce mental works. They want every household in this country to become their contributors and every household in this country to pay tribute to them. This is the same monopoly of which Mr. Currier spoke when he said, on the 3d day of March, 1909:

While we desired to give to the composer some compensation for such use of his music, we felt that there was great danger that unless that proposition was safeguarded a great musical trust would be formed. The preliminary steps in the formation of such a trust had already been taken. We have solved it in this way, and we have solved it, we believe, so as to be fairly satisfactory to both interests.

That is, to the public and to the copyright holder. However, by this provision in the bill they propose to divide a copyright—a thing which is necessarily one thing—into a thousand different entities, into as many entities as you can imagine, and permit each individual user to take off his part and say nothing about it until somebody has infringed on that part and then he will come in with a lawsuit. Then under our statutes there will be ascertained damages to the extent of \$250; and they will continue to do that until there is established a music trust which will demand tribute from everybody in the land.

They say that this is necessary in order for our country to enter the International Copyright Union. I say that it is not necessary. I say that no provision in the Berne convention, the Berlin convention, or the Rome convention, all three of which I hold in my hand, requires any such thing as the provisions in this bill. They recommended, but, after all, you will find they all come back to this thought. In

section 7 of the Rome convention, the most recent, it is provided that—

In case this period—

That is, the 50-year period of protection, which we will come to directly—

however, should not be adopted uniformly by all the countries of the union, its duration shall be regulated by the laws of the country where protection is claimed, and it can not exceed the terms fixed in the country of origin. The countries of the union will consequently not be required to apply the provisions of the preceding paragraph beyond the extent to which it agrees with their domestic law.

In other words, you could not make all of the countries of the world conform to the proposition that you must have uniform copyright laws. They can enter this union if they so desire, and enter it with whatever they have to bring to the union. Whatever laws are in existence in the United States are the laws under which the members of that union exercise their rights.

Ah, they tell you there are four things necessary. Automatic copyrights—we have permitted that without offering any amendment. That is in section 1 of the bill. This is with respect to the divisibility of copyrights, and I say this is not necessary. I say it could be very misleading to every user of copyright material and be destructive of the American interests that have to rely upon them.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. STAFFORD. Mr. Chairman, I ask unanimous consent that the gentleman may have one additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. BUSBY. I am objecting to this provision because it is not necessary. Nobody but the selfish interests who think they can use the American public to better advantage are coming in here and asking for this provision, and I make this statement and I hope the proponents of this bill will hear me. Not one letter has been written, not one editorial has been penned, not one article has been published in a magazine or newspaper but what, if you will bring to me—the article or the letter—I can point to you the selfish advantage that that individual hopes to obtain under this famous Vestal bill.

Is this not enough to challenge the attention of the Members of Congress to be watchful and careful, when we are about to wipe out the present law and write in something new, indefinite, and untried?

Mr. LANHAM. Mr. Chairman, I rise in opposition to the amendment.

It seems to me, ladies and gentlemen of the committee, that the gentleman from Mississippi has discussed almost everything except what is contained in this particular section to which he has offered the amendment.

The gentleman talks about monopoly. Of course, copyright is a monopoly, sanctioned by the highest law of this land, because it is provided for in the Constitution of the United States. It is no more a monopoly in the holding of property than we have in the holding of land.

But I wish to talk about this particular section and why the gentleman's amendment should be defeated. Now, what is divisible copyright and what does this section do? Take it in your own individual case and let us suppose you are Mr. A and you write a story. You sell this story to a magazine for a stipulated sum. The idea in that story is worth while. A producer of dramas sees it and says, "Here, I can take Mr. A's idea and make a dandy play," and he does so. The motion-picture people see it and say, "We can take Mr. A's idea and make a dandy motion picture." Now, what does this section provide? This section provides that in such a case the man who originates the idea may sell his magazine story to the magazine, that he may sell his dramatic rights to the producer of drama, and he may sell his motion-picture rights to the motion-picture producer.

Do you mean to say that an author who sells a story to a magazine for \$50 or \$100 should not be permitted for his



idea to get some part of the returns of those who exploit it in a dramatic or in a moving-picture way? This is all that divisible copyright means—the right of a man to contract with reference to his property for specific purposes, just as a man running a garage may rent a car one day for a pleasure trip, another day for a funeral, and another day for some other purpose, but the hirer could not keep his car from him indefinitely and for all these purposes if he only paid the owner for the original day.

Mr. BUSBY. Will the gentleman yield?

Mr. LANHAM. If I may first finish the remaining part of this section, I shall be pleased to yield.

Now, this is all that a divisible copyright is, and it is now practically in effect. This is simply a legalization of a trade practice, because in fact the authors do not give everybody wholesale rights in their works by the mere publication of them in a magazine.

There is a great advantage also in this section from another angle. Heretofore the bookman, the magazine man, the drama producer, or the motion-picture operator, when he has procured an assignment of a right, has had only an equitable right, which he could not enforce in actions in the courts unless the copyright owner were joined with him in the suits. Now, the copyright owner might be away in Europe or elsewhere, or he might be dead and have heirs scattered here and yonder. In lieu of that equitable right we prescribe in this section that the man who takes the assignment of a copyright shall have a legal right, and the right he buys in the copyright he may defend in actions in the courts without the necessity of joining the copyright owner with him. That is all that this section does, and that is the reason, in my judgment, the amendment of the gentleman from Mississippi should be defeated.

Mr. CONNERY. Mr. Chairman, I rise in opposition to the amendment.

Mr. BUSBY. Will the gentleman from Texas yield?

Mr. LANHAM. Yes; if my time has not expired.

Mr. BUSBY. The gentleman gave an illustration of the use of an automobile. I think the illustration is very apt. Is it not a fact that each one who occupies the automobile occupies it to the exclusion of everybody else when using it?

Mr. LANHAM. Yes; and they pay for it.

Mr. BUSBY. No one else can use it at the same time.

Mr. LANHAM. Suppose a magazine buys for publication my story or your story and pays for it; then, if a dramatic producer wants to put it into a play and make money on it, why should you or I not receive from that producer something for the use of it?

Mr. LA GUARDIA. According to the gentleman from Mississippi, he would protect the producer and the assignee, but leave the author out in the cold?

Mr. BUSBY. That is absolutely not so, and I wonder at gentlemen being so dumb as to understand it that way. [Laughter.]

Mr. CONNERY. Mr. Chairman, I would like to subscribe to the sentiments expressed by the gentleman from Texas [Mr. LANHAM]. Speaking on copyrights, I am going to give an example of what happens. You write a song, and you copyright the manuscript at the Congressional Library. You make arrangements with a music publisher in New York City, and he is going to pay you a half a cent or a cent royalty on that music. That music publisher in New York copyrights the sheet of music, and as soon as he sends it to the printer and has his name put on it, it no longer belongs to you who wrote the song; it belongs to the music publisher. When that song is sold in the 5 and 10 cent stores or anywhere else you will be entitled to collect your 1-cent royalty. Now, along comes the movie producer from Hollywood, and he is going to use the song of which you are the author, and you would like to sell him the song. The music publisher says, "Oh, no; that copyright belongs to me; you only have a copyright of the manuscript, but I will split 50-50 with you on what you get from the motion-picture producer."

Then Mr. Ziegfeld, George M. Cohan, Earle Carroll, or some other playwright comes along and he wants to put it

in his show. All right, you say, you will sell him the song, but the music publisher comes along and says, "Oh, no; but I will split 50-50 with you."

Mr. BEEDY. Will the gentleman yield?

Mr. CONNERY. Yes.

Mr. BEEDY. If the music publisher owns the copyright as a matter of fact, why is he so generous in offering to split 50-50 with the author?

Mr. CONNERY. That is a question. Probably it is because the music publisher feels that there is a sort of equitable interest in it for the author.

Mr. BLOOM. Will the gentleman from Massachusetts yield to me?

Mr. CONNERY. I yield.

Mr. BLOOM. The reason he is so generous is that he has only the right of publication of that song. Now, some one else wants the right to make a moving picture and/or use the title. The music publisher who owns the copyright will not give his consent unless he gets paid for it, and the song writer can not give his consent because the music publisher owns the copyright.

Now, if the gentleman from Massachusetts will pardon me further, I would like to say that this is no different than things are to-day. If I write a book and give the Saturday Evening Post the serial right or the magazine right, I must ask the Saturday Evening Post to transfer the copyright back to me after they have published it. It is all a matter of contract, so the author must go to the publisher of the newspaper or of the book and get that right assigned back to him. That is all this provides. The divisible copyright is no different to-day in trade practice than this bill. The only thing is that you give them that right, and there is no one opposing this right. Every author, every publisher, every newspaper man in this country who understands this copyright bill is in favor of it.

Mr. BEEDY and Mr. LA GUARDIA rose.

Mr. CONNERY. I have the floor, and I yielded to the gentleman from New York [Mr. BLOOM], because from his great experience he knows what he is talking about. He was in the business himself and knows all about it.

Mr. BEEDY. The gentleman takes the position that this bill as it is written simply legalizes what is the practice in the trade to-day.

Mr. CONNERY. Not only that but the writer of the story or the song, the product of his brain, will be given a right to get a profit from the music publisher, the movie producer, the phonograph-record producer, or others who desire to reproduce the work.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent to proceed for two minutes more.

Mr. BUSBY. How does the time stand, Mr. Chairman?

The CHAIRMAN. Four minutes remain. Is there objection to the request of the gentleman from Massachusetts?

Mr. BUSBY. I object.

Mr. CONNERY. Then I ask for one minute.

Mr. BUSBY. Well, I will give you fellows the time. You need it more than we do to sustain your position.

Mr. CONNERY. I thank the gentleman, but I think the House is pretty well satisfied that it is about time to give the author a little protection. The gentleman from Mississippi was speaking about monopoly. If he wants to kill monopolies, he will kill his own amendment to-day. Therefore I hope the amendment of the gentleman from Mississippi will be voted down.

Mr. BUSBY. Mr. Chairman, I ask for recognition for the remainder of the time.

The CHAIRMAN. The Chair will recognize some one else in support of the amendment, if anyone desires recognition, as the gentleman from Mississippi has already had the floor.

Mr. BUSBY. I ask unanimous consent that I may use the time in support of the amendment.

Mr. VESTAL. As a member of the committee I would like to have one or two minutes.



The CHAIRMAN. Three minutes remain. The gentleman from Mississippi asks unanimous consent to proceed for three minutes. Is there objection?

There was no objection.

Mr. BUSBY. I want Members to listen, and I will tell them the secret about this monopoly. I hold in my hand a copy of the opinion in a case of *Witmark & Sons v. Pastime Amusement Co.* (298 Fed.) In that case this super-monopoly sued a little fellow in South Carolina because a girl performed for 27 seconds from memory a piece of music. The result was that the Composers, Authors, and Publishers' League came along and said, "Pay us \$250 and attorneys' fees and court costs and we will be satisfied." But he said no. The fact is, as the court points out, that all of these music writers are in a combine, and here is what they agreed to:

Whereas each member has severally agreed with other members and with the Performing Rights Society to execute such assignment:

Now, therefore, the undersigned, for good and valuable considerations, sells, assigns, transfers, and sets over unto the Performing Rights Society, its successor and successors, for a period commencing from the date hereof and continuing until January 1, 1936, the exclusive right of public performance for profit, in the United States and Canada, United Kingdom of Great Britain and Ireland, and Italy the music of each and every musical work which at the time of the date hereof belongs to the undersigned, or which hereafter and during the period ending January 1, 1926, shall be written, composed, or acquired by the undersigned.

Also I call attention to this provision:

All the profit, benefit, and advantage that shall or may arise from such exclusive performing rights hereby sold, assigned, transferred, and set over to the Performing Rights Society for such period, shall be held and enjoyed by the Performing Rights Society, subject to the articles of association of such Performing Rights Society.

Mr. LANHAM. What application has that to the section under consideration?

Mr. BUSBY. It has application to the whole bill.

Mr. BLOOM. It has nothing to do with the divisible copyright.

Mr. BUSBY. The proposition is this, that all copyright provisions are locked up in one thing, and if you permit them to split this up and divide a copyright, they will find more avenues through which they can reach out and make the public pay with this and that and the other proposition; like an automobile, copyright is but one thing; like a tree, it is but one thing, with the branches reaching out; or like any other indivisible thing. Treat it as one thing and you can keep track of it, but if you adopt the provisions of this bill you can not. If you keep the present law, it is not a burden to anyone.

Mr. VESTAL. Mr. Chairman, this amendment that is proposed by the gentleman from Mississippi is against the provision of the divisible copyright. You have heard it discussed by my colleague [Mr. LANHAM]. Of course, it only gives to the authors and composers a legal right which they now have as an equitable right, so that every man who buys a right in a copyright, if this bill should become a law, has a right to protect and defend that right which he paid for. This amendment ought to be defeated.

The CHAIRMAN. All time has expired. The question is on the amendment offered by the gentleman from Mississippi.

The question was taken; and on a division (demanded by Mr. Busby) there were—ayes 19, noes 97.

So the amendment was rejected.

The Clerk read as follows:

SEC. 10. Assignments, grants, licenses, and mortgages of copyright or of any separate right therein, or any other instrument or paper writing relating to or affecting a copyright or right therein, may be recorded in the Copyright Office at any time after execution. A failure so to record shall not affect the validity of any such instrument: *Provided*, That no unrecorded assignment, grant, license, mortgage, or other instrument shall be valid or of any effect against any previously recorded assignment, grant, license, mortgage, or instrument to a purchaser, licensee, or other transferee for value and without notice, whether such unrecorded instrument be prior in date of execution or not, and whether subsequently recorded or not. Such proviso, however, shall not apply to unrecorded instruments by which periodical and/or newspaper publication rights are assigned or conveyed; but if, in addition

thereto, such instruments also assign or convey other rights, and/or refer or pertain in any way to any other rights, then such instruments to the extent of the provisions or agreements contained therein relating to such other rights shall be subject to such proviso.

After the effective date of this act, upon the purchase of a part, but not all, of the rights of the author in or under a copyright, unless the instrument assigning such rights by its terms expressly includes the right of first publication, the purchaser shall be deemed to have knowledge, at the time of such purchase, of the existence of such first publication right in or under such copyright, having priority as to time of publication over any right or rights so purchased: *Provided*, That rights of first publication shall be deemed to have expired by lapse of time as against a purchaser of any other rights in or under the same copyright if not exercised by commencement of publication within one year of the date of delivery of the entire copyright work to the purchaser of such right of first publication, unless within such period the purchaser of such right of first publication shall have recorded in the copyright office a notice or instrument of assignment signed by the author, or his agent duly authorized for the purpose, showing the name of the author, the name of the assignor if other than the author, the name of the assignee and the duration and general nature of such right of first publication. As between two or more innocent purchasers of right of first publication in the same copyright work, that one who shall have first recorded the notice or instrument of assignment as herein provided shall prevail, anything in this section 10 of this act to the contrary notwithstanding, and notwithstanding any provision hereinabove contained as to unrecorded instruments conveying periodical and/or newspaper rights: *Provided, however*, That for this purpose, where such notice or instrument of assignment is mailed by registered mail properly addressed to the copyright office in Washington, the date of such mailing shall be deemed the date of record. All assignments, grants, licenses, mortgages, and other instruments, notices or paper writings hereinabove referred to, when recorded in the copyright office, shall be indexed in the name of the author and the assignor, licensor, or mortgagor, and in the name of the assignee, licensee, and mortgagee, and under the title of the copyright work.

Mr. VESTAL. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. VESTAL: Page 12, line 1, strike out the word "and" at the end of the line and insert the word "or."

Mr. STAFFORD. Mr. Chairman, I rise in opposition to the amendment in order to inquire of the chairman of the committee what means are provided in the bill to determine in the case of automatic copyrights when the work of creation is really created. Heretofore, under our existing laws we have always required that the book or other work or composition shall be registered in the copyright office of the Library of Congress.

That is the beginning date of his protection. Now, it is intended to give the author the right upon creation, regardless of publication. How is the public at large to know when the automatic right of copyright begins?

Mr. LANHAM. May I say to the gentleman that it begins with the creation of the work.

Mr. STAFFORD. I know it does; but, how is the public to know when that is? Heretofore, under existing practice since the creation of the Government, the date of beginning of the copyright is at the time it is registered in the copyright office of the Library of Congress.

Mr. LANHAM. The gentleman is anticipating, perhaps, a section of this bill which deals with the term "copyright." The date of first publication is a very important thing under the present law, of course, because the copyright expires, if renewed, within 56 years from the first date of publication.

Under the pending bill the time when the copyright really begins to run dates from the death of the author, and not from the creation of the work. Consequently it is relatively unimportant as to when the work was created, unless in the case of an author who has died.

Mr. STAFFORD. Well, is it relatively unimportant to know that a copyright does not begin to run until the date of the death of the author? It begins to run from the date of the creation. How is the public at large to know that the copyright is running?

Mr. LANHAM. Will the gentleman yield?

Mr. STAFFORD. Yes. I am rising for information as to the practical operation of this automatic copyright.

Mr. LANHAM. How is the public at large to know that work is in existence until it is created?



Mr. STAFFORD. Under existing law they know it from the date it is registered in the copyright office in the Library of Congress, and the public has notice of that registration, and not until then has he any right to copyright.

Mr. LaGUARDIA. Will the gentleman yield?

Mr. STAFFORD. I yield.

Mr. LaGUARDIA. The reason the date is fixed now is that the copyright runs for a definite term, while in this instance it is the property of the creator during his life, and the fixed term is from the date of his death, 50 years. In other words, it is for life plus 50 years.

Mr. STAFFORD. It may be a hundred years.

Mr. LaGUARDIA. No; it can not be.

Mr. STAFFORD. Oh, the gentleman is not acquainted with the terms of this bill. This bill gives the right of copyright to an author from the time it is created in his mind until the time of his death, then plus 50 years. If an author is 25 years of age when it was created, and he lives to be 75 years, he has 50 years of right while he is living, plus 50 years after his death.

Mr. LaGUARDIA. That is exactly what I said.

Mr. STAFFORD. I beg the gentleman's pardon, that is not what he said.

Mr. LANHAM. But, a determination of the state of creation is not important when he has a term of 50 years after his death and the time you begin to compute runs from his death.

Mr. STAFFORD. But how is the public to know? How is the public to know that the work has been created?

Mr. LANHAM. How is the public to know that the work has been created?

Mr. STAFFORD. Yes.

Mr. LANHAM. How does the public know that any work has been created?

Mr. STAFFORD. Why, by production.

Mr. LANHAM. That is the only way the public can know now. Not all works are copyrighted. Their existence is notice of their creation.

Mr. FREAR. Will the gentleman yield?

Mr. STAFFORD. I yield.

Mr. FREAR. In the case of a patent, however, there is a specific way of knowing when it begins. There should be the same thing with a copyright. I agree with the gentleman.

Mr. STAFFORD. Oh, yes; but we have fixed rights as to the author. A man who is really an inventor and gives something to society has an exclusive right only for 17 years, predicated upon divulging to the public all the facts, making a full disclosure so the public at the end of the patent right might manufacture the article, then the inventor is entitled to his exclusive patent. Here it is proposed to disregard the fundamental law of the monopoly privilege, as to inventions, where the right is limited to 17 years only, and give the author or publishing house a monopoly privilege for maybe over 100 years. I am opposed to that extension of the monopoly to authors and publishers for 100 years.

Mr. LANHAM. Mr. Chairman, I rise in support of the amendment. In the first place, the gentleman does not draw a distinction between patents and copyrights, for which different terms are prescribed in our law, and for a very logical and substantial reason. The term for a patent is 17 years. Any invention which relates to industry has its usefulness and its applicability quickly determined. If it is not used quickly, it is not used. On the contrary, an author may create a work to-day which may not come to public notice until 25 or 30 years from now and then be very popular. I cite a very well-known instance in the history of English literature, Jane Austen, one of whose books in particular is now listed among the very best of the classics. Jane Austen wrote those classics when she was barely out of her teens. She was never appreciated in her day. She did not get the proper return from her works, but the time came when Jane Austen's works became popular because of their intrinsic worth and the public then began to appreciate them. There is that distinguishing difference

between a patent and a copyright, one applying to industry and its usefulness being quickly determined, whereas a literary work of merit and value may not come into its own for many years.

Mr. FREAR. Will the gentleman yield?

Mr. LANHAM. I yield.

Mr. FREAR. The purpose of the recording of a patent is to give notice to the world. How is the world to know in regard to those which have been conceived in the mind of an individual and not yet given to the public? It is notice, as I understand.

Mr. LANHAM. Now, we have already passed the section with reference to automatic copyright, which provides that upon creation of the work the creator has an automatic copyright in that work.

Under the present law it is important to determine when a work is created, because the statutory time runs from the creation of that work. In this bill the statutory period when the copyright is to expire really begins to run from the death of the person. Consequently, the important thing to determine is the death of the person. That comes in a subsequent section. It is really not pertinent to this particular section, but since it has been injected I wanted to rise and try to clarify it.

Mr. CHIPERFIELD. Will the gentleman yield?

Mr. LANHAM. I yield.

Mr. CHIPERFIELD. A claims to be the author of a composition. B gets a copy of his composition. There is nothing on file in the copyright office in any way to tell who is the real author. B says "I am the author." A says "I am the author." There are infringements; there are conflicting claims; one demands a sum for his infringement; another demands a sum for his infringement. The one who settles with either of them settles at his hazard. Should there not be something to determine, prima facie, who is the real author of the composition?

Mr. LANHAM. And there will be, I will say to the gentleman from Illinois, for this reason, that while notice is not required, the mere fact that an innocent infringer can not be proceeded against because of the fact that there is no notice, will force every man to record his copyright and give the protecting notice. That is the true situation. The notice will be recorded just the same in order to protect a man's rights.

Mr. STAFFORD. Will the gentleman yield?

Mr. LANHAM. Yes.

Mr. STAFFORD. The gentleman cited the singular case of Jane Austen which, I believe, is referred to in the report and, I believe, the only one in history.

Mr. LANHAM. I do not think the gentleman ought to go that far.

Mr. STAFFORD. Can the gentleman cite any other cases?

Mr. BLOOM. Yes; I can. Take the case of the man who wrote the Stein Song. It lay idle for 25 years and has just become popular.

Mr. STAFFORD. The gentleman brings up the Stein Song, with which all Milwaukeeans are naturally familiar, but I would like to inquire whether, in the general run of affairs, the worth of a composition of music is not determined within a few years after it has been published?

Mr. LANHAM. I can not say so definitely as to music because I am not so familiar with music as I am with literature, but I call the gentleman's attention to the fact that the opera houses of the country are to-day producing more of the older operas than of modern musical compositions.

The CHAIRMAN. The time of the gentleman from Texas has expired. The question is on the committee amendment. The committee amendment was agreed to.

The CHAIRMAN. The Chair desires to say to the gentleman from Indiana that the Chair is informed by the Clerk that a committee amendment has been sent to the desk and has not been read.

Mr. VESTAL. Mr. Chairman, I offered an amendment striking out the word "and" and inserting the word "or" in line 1 on page 12.



The CHAIRMAN. The Chair is informed by the Clerk that there is an amendment at the Clerk's desk sent up by the committee.

Mr. VESTAL. I am withdrawing that amendment. Mr. Chairman, I offer a committee amendment.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment offered by Mr. VESTAL: Page 12, line 5, after the word "assignor" insert a comma, strike out the word "or," and after the word "licensor" insert the words "or mortgagor."

Mr. VESTAL. This simply makes the language conform with the language in section 10.

Mr. STAFFORD. Mr. Chairman, I ask for recognition in order to make an inquiry. During the prior consideration of this bill no debate was had as to section 8. It was read without debate, and it relates to the copyrighting of works of architecture. I rise to inquire whether under the existing copyright law architects have a right to copyright their plans and designs?

Mr. BLOOM. You can copyright anything now.

Mr. STAFFORD. You could, virtually, under the bill that was strongly contested before we adjourned, but ultimately was passed, and which fortunately is being opposed in the other body. Under that bill you can copyright any kind of design with reference to clothes, or anything else. You can copyright the design of the gentleman's spectacles.

Mr. BLOOM. You can send the Bible in to-day and copyright it.

Mr. STAFFORD. Well, under existing practice, I do not believe architects have the right to copyright their plans and designs, but you incorporate in section 8 a provision granting that right. I am seeking information as to whether under the existing law that can be done.

Mr. VESTAL. I think that can be done at the present time.

Mr. STAFFORD. I have seen from time to time, as other Members of the House may have seen, prints of plans and designs of homes, and yet it was never stated that those plans and designs were copyrighted.

Mr. HUDSON. Will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. HUDSON. Within the past month I saw a considerable exhibit of religious edifices and on those plans it was stated that they were copyrighted.

Mr. STAFFORD. I have examined publications containing various designs or plans of buildings, and while you may get a copyright on the arrangement of them in a book, I question whether under existing law we have ever recognized copyrights of plans and designs of buildings.

Mr. BLOOM. If it is original, why can you not?

Mr. STAFFORD. You are going to check architecture if you are going to prevent any architect from copying any of the masters or any other work for 100 years.

Mr. BLOOM. Not if it is in the public domain. The gentleman surely does not mean that.

Mr. STAFFORD. You take it out of the public domain under this provision.

Mr. BLOOM. No.

Mr. STAFFORD. It has always been under the public domain, but now you are taking it out of the public domain.

Mr. BLOOM. This law is not retroactive.

Mr. STAFFORD. You are making it now apply to such designs in the future, and that is what I am protesting against.

Mr. BEEDY. Will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. BEEDY. I will say to the gentleman that as a matter of law if you see a print of a design for a house and you proceed to build and use that design and print, whoever it was that designed that house can sue you for a commission for the use of it. All he has to do is to prove his authorship. That is well-established law, as I know, because I have been through it.

Mr. STAFFORD. I am very glad to have that information from the gentleman. Under the scope of this provision

anyone who uses such a plan will be subject to punishment, and I do not think that is just.

Mr. BEEDY. I will say to the gentleman that is the substantive law as it now stands.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. BUSBY. Mr. Chairman, I will be glad to give the gentleman some information on that subject. I read from the opinion in the case of *Baker v. Selden* (101 U. S. 99), where the court said:

The difference between the two things, letters patent and copyright, may be illustrated by reference to the subjects just enumerated. Take the case of medicines. Certain mixtures are found to be of great value in the healing art. If the discoverer writes and publishes a book on the subject (as regular physicians generally do), he gains no exclusive right to the manufacture and sale of the medicine; he gives that to the public. If he desires to acquire such exclusive right he must obtain a patent for the mixture as a new art, manufacture, or composition of matter. He may copyright his book if he pleases; but that only secures to him the exclusive right of printing and publishing his book. So of all other inventions or discoveries.

The copyright of a book on perspective, no matter how many drawings and illustrations it may contain, gives no exclusive right to the modes of drawing described, though they may never have been known or used before. By publishing the book, without getting a patent for the art, the latter is given to the public.

You see, patent covers the art of architecture and copyright covers the description of the thing.

The fact that the art described in the book by illustrations of lines and figures, which are reproduced in practice in the application of the art, makes no difference. Those illustrations are the mere language employed by the author to convey his ideas more clearly. Had he used words of description instead of diagrams (which merely stand in the place of words), there could not be the slightest doubt that others, applying the art to practical use, might lawfully draw the lines and diagrams which were in the author's mind and which he thus described by words in his book.

The further illustration is given that if a man wants to write a treatise on a certain remedy he outlines the remedy and may copyright his description, but if he wants to preserve the formula he has to patent the formula and specify in his patent the ingredients that go into it.

So a copyright and a patent do not always run parallel in these things. Copyrights cover one thing, and the fact that the author of an architectural work sets out in his description a certain way for doing a thing does not prevent other architects from using the same lines unless we enact this bill and throw the whole situation in this country into confusion without a rudder or compass so no one will know where he is going and no one will know what to depend upon.

Mr. LaGUARDIA. Mr. Chairman, I move to strike out the last word.

The gentleman from Mississippi [Mr. Busby] unintentionally, I am sure, is leaving a wrong impression as to the effect of section 8 to which reference has been made. Why, gentlemen, just read section 8. It is a complete answer to what the gentleman from Mississippi has said.

Mr. BUSBY. If the gentleman will yield, I did not intend to discuss section 8.

Mr. LaGUARDIA. "The copyright of a work of architecture shall cover only," what?—

Its artistic character and its design and shall not extend to processes or methods of construction, nor shall it prevent the making, exhibiting, or publishing of photographs, motion pictures, paintings, or other illustrations thereof.

Why, gentlemen, the section is replete with negatives which answer every specific inquiry that has been made on the subject.

Mr. BLOOM. That is the law now.

Mr. LaGUARDIA. Yes.

Mr. BLOOM. I have the law before me and you can do the same thing under present law.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

Mr. VESTAL. Mr. Chairman, I offer another committee amendment, which I send to the desk.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.



The Clerk read as follows:

Committee amendment offered by Mr. VESTAL: Page 12, line 10, after the word "of," insert the letter "a," and in line 11 change the word "officers" to "officer."

The committee amendment was agreed to.

The Clerk read as follows:

#### TERM OF COPYRIGHT PROTECTION

SEC. 12. The term for which copyright is secured by this act shall be for the life of the author, if living, and for a period of 50 years after his death, except that where the author is not an individual, the term shall be 50 years from the date of completion of the creation of the work; and except that in the case of a work by joint authors the copyright shall terminate at the expiration of 50 years from the date of the death of the joint author who first dies, or shall exist during the life of the author who dies last, whichever period is longer: *Provided*, That where the work is based in whole or in part upon a previously existing work in which a longer copyright term may endure, then the copyright in said work shall endure for a term equal to that of said previously existing work, or for the term of 50 years aforesaid, whichever term is longer: *Provided further*, That the term of copyright shall not in any case exceed the term granted in the country of the origin of the work.

Mr. O'CONNOR of New York. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from New York offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. O'CONNOR of New York: On page 12, line 17, after the figures "12," strike out all of the section and insert:

"That the copyright secured by this act shall endure for 28 years from the date of first publication whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author), or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the term of 28 years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within 1 year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, when such contribution has been separately registered, the author of such work if still living, or the widow, widower, or children of the author if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors or, in the absence of a will, his next of kin, shall be entitled to a renewal and extension of the copyright in such work for a further term of 28 years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within 1 year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of 28 years from first publication."

Mr. O'CONNOR of New York. Mr. Chairman, ladies and gentlemen of the committee, the amendment which I have offered is the exact language of the existing law. I propose to continue it instead of adopting this new provision as to the life of the copyright.

When this bill was brought before the House under a special rule of the Rules Committee, of which I am a member, on June 12, 1930, I called the attention of the House to what I believe is a most unusual and what might well be called a very questionable provision in this bill.

This bill as a whole may be necessary and good law, but I desire to call to the attention of the Members of the House, and particularly to the lawyers of this body, the provision in new section 12 which would give to a copyright owner sole, exclusive, and monopolistic rights to and in his production not only for his entire lifetime but for 50 years after. Such a provision is an innovation, to say the least. Such a period may total as much as 125 years. I wonder that the zealous advocates of this measure in the enthusiastic committee reporting it did not add "the period of gestation," which is usually included in laws relating to perpetuities. [Laughter.]

The Constitution of the United States, in Article I, clause 8, provides:

The Congress shall have power \* \* \* to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their writings and discoveries.

In a number of cases it has been held that this power of Congress is confined to "useful arts" and "science," as mentioned in the Constitution. One might wonder if these "jazz songs" are either "science" or "useful art." The cases also hold that the primary consideration is the public interest—that the public may some day within "limited times" have free access to and use of these works of art and science. Would the duration of the world plus 50 years be a "limited time"?

Under the present law the public pay royalties on copyrights for a permitted total of 56 years. Now it is proposed to be extended to possibly 125 years or even a longer period of time. Why?

Ladies and gentlemen, you have heard, and will hear, a great deal about the imperative necessity of our Nation joining, before August of this year, the International Copyright Union, or what is sometimes called the Berne convention. It would seem that the fate of this country hung upon whether or not we pass this legislation so that we might enter that foreign union. In other words, the American Congress is being pushed to-day to pass legislation in accord—and almost verbatim—with the copyright laws of other countries. The only real reason that will be given for the rush is that if you do not extend the period of the life of the copyright we can not join this foreign union.

The other countries demand that we pass this legislation before they will take us into their "League of Nations" or whatever you care to call it. One might suggest we surrender our seats here and let the members of parliament of Berne, Berlin, and Rome enact this legislation.

For years I have listened to the arguments before the Rules Committee in behalf of this bill. It has been tossed around this House for eight or nine years. Up to last June, no one dreamed it had a chance of being considered seriously. As has been said here to-day, there has been probably more organized propaganda behind it than on any other bill except possibly a few exceptions. Of course, the women and the grocers and butchers who have written in its behalf do not comprehend its provisions.

Mr. COCHRAN of Missouri. Most Members of Congress do not know what it is about.

Mr. O'CONNOR of New York. Yes; probably not a dozen Members of Congress understand it, so highly technical are its provisions. It is natural that a revision of the general copyright be brought before Congress, say, once in a generation. But practically every argument I have heard pleading for the immediate passage of this legislation has referred to the dire need of our joining the Berne convention, and at once. It is called "emergency" legislation.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. O'CONNOR of New York. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Without objection, it is so ordered. There was no objection.

Mr. O'CONNOR of New York. I desire to submit to the Members of this House that any proposition to make the public pay royalties and deprive them of the free access to the inventive genius of America for such a long period of time as 125 years is a direct and unprecedented violation at least of the spirit of the Constitution, if it is not an illegal and invalid proposal in contravention of the provisions of the Constitution.

It has been said here to-day that copyrights and patents are not monopolies. Why, ladies and gentlemen, they are among the few monopolies recognized or permitted by our Government. Such an exclusive privilege as is given the patentee or copyright owner would not be legally possible were it not for the constitutional provisions and special legislation. Where will you find, for instance, in our laws relating to restraints on alienation of property, where will you find in our other laws relating to property rights or



privileges and such, tie-up and complete exclusive control for so long and definite period of time?

I submit that while the bill may be all right, as a whole, this provision as to the term of the copyright is its big, pernicious feature. My amendment restores the old law as it exists to-day. That law protects the copyright owner for a term of 28 years with the right to a renewal for another 28 years. Who should ask more? My amendment should be adopted, whether the countries across the Atlantic like it or not. We should continue to enact our own legislation without any dictation from abroad.

Mr. LANHAM. Mr. Chairman, I rise in opposition to the amendment. This is a feature of this bill about which there has been very much discussion and very much misunderstanding. I fear that even my good friend from New York [Mr. O'CONNOR] has misunderstood it somewhat. He seems to predicate his opposition on two things, principally. First, that we must extend this term in order to get into the Berne convention. As a matter of fact, that is altogether unnecessary, because the length of term is not one of the requisites of entry into the Berne convention, and this section has nothing to do with the Berne convention or our eligibility to enter it. His other argument is that the public is going to pay a royalty for all these years. I think as a matter of fact, that this amendment is in the interest of the public financially, in the interest of the book buyer, and I think I can show you why. That arises out of the economy of a single printing, and I will show you what I mean by that. If you go down to the book-selling stores to-day you can find many modern and relatively recently copyrighted editions for sale for \$1 each. Take *Famous Trials of History*, written by a great English jurist; take *Wells's Outline of History*; you can buy them for \$1 each, but when you try to buy a similar edition of *Benvenuto Cellini*, or, coming down even to the days of *Emerson's Essays* or *Thoreau's works*, or most of the early writers of our country, you have to pay more than a dollar for each of them, although these works have long since passed into the public domain. Why? When they have gone into the public domain, any book-printing house may print and sell them, and the public has to pay for those many printings.

Why can you buy *Wells's Outline of History* for a dollar—a recently copyrighted book? It is because the MacMillan Co. has the sole right to print that book throughout the length of the term of the copyright, and by reason of that fact the book is printed but one time, and the initial and great cost of putting a book on the market is in the first printing. One company has control of it and you get the economy of a single printing. That is the reason you can buy to-day books that were recently copyrighted much more cheaply than you can buy many similar editions of books that have been in the public domain for a hundred or a thousand years.

Why extend this term to life and 50 years after death? I believe that the American author is entitled to just as much protection as any author in the world. I believe that the creative genius of this country has as much right to be fostered as the creative genius of any country in the world. This term of life and 50 years is the standard one throughout the world. Forty civilized countries are using it.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. LANHAM. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. LANHAM. The exceptions which I now recall are Spain with 80 years, and Germany with 30 years. Why should not the American author be given the right abroad to sell his books with the same opportunity that the foreign author has? Why should we restrict his privilege? This is simply an effort to write into the law what is the standard world opinion to-day in the matter of copyrighted works. Let us suppose that we should pass away and leave to our children houses and lots. How long ought they to be allowed to take the income from those houses and lots? Is there any gentleman on the floor of this House who would

rise and say that 50 years after he died, his children ought not to get any more income from his houses and lots? Why, just as long as they can rent them, you want those children who succeed you to have the right to enjoy the benefit that you gave them.

Mr. O'CONNOR of New York. The gentleman realizes, I am sure, that he is talking about property rights which have endured from the beginning of the world, as against copyright, which is a mere privilege or right from the Government, and not an inherent right at all.

Mr. LANHAM. Oh, the gentleman overlooks the fact that it has been judicially determined that copyrights are property rights. They are the creation of a man's brain instead of the creation of a man's hands, and they are entitled to protection. If one man labors all of his life in the commercial field and is thereby enabled to leave to his family houses and lots, and another man labors all of his life in the creative field, in literature or art, or music, or whatever it may be, and leaves to his children his copyrights, shall we say that the descendants of one man may enjoy the returns from his property forever, but hesitate to say that the descendants of the other man may enjoy the fruits of his ancestor's labors for 50 years after his death? Why discriminate so radically between the efforts of men who work in different fields?

One trouble in this country is that we spend so much of our time on the floor of this House and elsewhere in trying to protect the commercial interests of the country, looking to industry, looking to the financial things, while we let the creative, the cultural, and the esthetic wane and die, and in this connection I quote again those oft-spoken words of Goldsmith:

Ill fares the land, to hastening ills a prey  
Where wealth accumulates and men decay.

Surely we are not asking too much for the American author when we say give him the same right that the other authors of the world are given in their respective countries. [Applause.]

Mr. O'CONNOR of New York. Mr. Chairman, will the gentleman yield?

Mr. LANHAM. Yes.

Mr. O'CONNOR of New York. The gentleman will admit that there would not be any such right at all except by virtue of our Constitution to protect the author.

Mr. LANHAM. That is true.

Mr. O'CONNOR of New York. Will the gentleman give the House some idea of what he thinks would be a limit of time within the provisions of the Constitution? In other words, how far would his committee dare to go in extending this right?

Mr. LANHAM. According to law, that is certain which may be made certain, and anything is limited which has a time fixed for a beginning and for an ending. This has a time fixed for the beginning, the creation of the work, and an ending, 50 years from the death of the author. That is certainly limited. If it is not limited, my friends, then practically all of the civilized world is enjoying in literary and esthetic and cultural lines an unlimited privilege.

Let me call to your attention the fact that to-day you are paying \$5.50 at the box office in New York City and \$7 at the ticket-selling agencies to see *Lysistrata* written by Aristophanes. You can go to plays and musical comedies that are successes, that were written last year or the year before, modern copyrights, and buy your ticket for a great deal less than that. How much of that money goes to Aristophanes?

Mr. LA GUARDIA. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. BUSBY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman and members of the committee, the gentleman from Texas is a very fluent speaker. I am always impressed with the indifference with which he waves aside a good argument made by somebody like the gentleman from New York or anybody else. He comes out and at once admits there is nothing to any argument that is not on his



side of the question, and he is like an old man in the community where I resided at one time, there was nobody but him and God who was certain to be right all the time.

My friend from Texas sweeps aside everything but his contention. I am going to show you in a few minutes what I think of some of the points he advances.

A New York publisher came to my office and brought a copy of Wells's Outline of History and he brought the other book mentioned by the gentleman from Texas. They sell for \$1 each. I paid \$5 for the same book by Wells, but this publisher explains the reason he is selling these books now at a dollar. It is because they have sold all the \$5 customers and the book has gone stale. They have the paper and the plates—

Mr. LANHAM. Will the gentleman yield?

Mr. BUSBY. No; I do not yield.

Mr. LANHAM. Would that not be true regardless of the length of time of the copyright?

Mr. BUSBY. The reason they are \$1 now is because the publishers are catching the dollar customers, and the gentleman from Texas can not deny it.

Mr. LANHAM. Will the gentleman let me say in that regard—

Mr. BUSBY. I will yield.

Mr. LANHAM. The copyrights have not expired, of course, on any book that is printed, whether it is 28 years or 50 years, and you are going to catch the \$5 customers first.

Mr. BUSBY. Is that all the gentleman wishes to say?

Mr. LANHAM. I mean to say it has nothing to do with the term of copyright.

Mr. BUSBY. It has a lot to do with the price. They sold up the \$5 customers until they were all gone; they have the plates and the ink and the workmen and they turn these books out at a cost of a very few cents, then catch the next trade, which is the dollar trade, and that is the only reason for the reduction in price.

Now, as to the next proposition. You have all received a great many letters regarding this "50 years after the death of the author" provision, the term for which the copyright shall run. Many of those letters came from members of the Christian Science Church. I have a very high regard for the Christian Science Church and a very high regard for many of the members of that church, but they have been misled into asking you to maintain a monopoly on the textbook of their religion so that the publishing house that controls the publication of that may extend the copyright. Now, what is the situation? On June 4, 1875, Mrs. Mary Baker Glover, at that time, first copyrighted Science and Health With a Key to the Scriptures. In 1902 she extended that copyright. In 1917 the copyright was still extended for the remainder of the 56 years by Eddie Foster, a kinsman. The 56 years will expire on that copyright on the 4th day of June, 1931. So the publishing house writes to all parties, "Write your Congressmen reams of letters, lobby on the floor of Congress, do anything else you can to get the monopoly of the Christian Science Textbook extended not until June 4, 1931," which makes 56 years, but "50 years after the death of the author."

The author died on the 3d of December, 1910, and 50 years added to that will make it the 3d of December, 1960, that this monopoly will continue, instead of June 4, 1931, which was the original contract. Now, is not that a peculiar way to enact legislation, to bow down before a lot of letters written without any knowledge of the bill that come here just because they have a constituent's name signed to them? They do not understand that they are sealing up the source of distribution for the textbook of their religion. They are making it difficult for anybody to secure a copy of that textbook and thereby prevent the spread of the doctrines that they preach and teach to us. I do not think that kind of motive ought to be countenanced, and I do not think it will control many Members of this House.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. BUSBY. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. BUSBY. Now I want to say something about the other copyright law. A great deal has been said about the rights in foreign countries, and you applauded the gentleman from Texas, who speaks very smoothly on all occasions and eases over the rough places in such way so that we are all attracted to his argument.

In England the copyright period is 50 years after the death of the author. But after 25 years of that 50 years have expired, then any publisher can give notice to the copyright holder that he proposes to publish that work. He says, "You have had 25 years' exclusive control over it. During the next 25 years the public domain shall have some look in on the benefits that have been given to the world by your production. We will publish that and we will pay you a royalty on the common sale price for a period of time."

Now what is this situation in other countries? If it were applied to our own copyright act we would be in much better shape than we are now. Are we going to turn these copyright holders in to work on the American public under this International Copyright Union in a way that our authors can not go to foreign countries and deal with their people? Do you think it is fair that we should give them a greater advantage than they give to our authors?

Mr. BLOOM. Will the gentleman yield?

Mr. BUSBY. Yes; I yield for a question.

Mr. BLOOM. There is no difference in the Berne convention, which, of course, has nothing to do with this bill or this section, but whatever we give to them they give to us. Is not that right. In other words, if we give them 50 years they give us 50 years?

Mr. BUSBY. No. I can not yield further, but I will read it from the Rome convention, which is supposed to be the last revised effort of the United Copyright Holders of the World.

Mr. BLOOM. What section, please?

Mr. BUSBY. Section 7:

The duration of the protection granted by the present convention comprises the life of the author and 50 years after his death.

In case this period of protection, however, should not be adopted uniformly by all the countries of the union, its duration shall be regulated by the law of the country where protection is claimed, and it can not exceed the term fixed in the country of origin of the work. The countries of the union will consequently not be required to apply the provision of the preceding paragraph beyond the extent to which it agrees with their domestic law.

So you may give them everything, but our authors can not get anything more than the general law of the land provides.

Mr. BLOOM. Will the gentleman stand a correction? I do not think that article 7, which the gentleman read, is from the Rome convention. I have it here.

Mr. BUSBY. The trouble with the gentleman from New York is that he has one copy written in French and one in English, and he is trying to read the one in French, but he does not fully understand it. [Laughter and applause.] Now, may I proceed?

Mr. BLOOM. Will the gentleman allow a correction?

Mr. BUSBY. Not just now.

Mr. BLOOM. Just to correct the gentleman.

The CHAIRMAN. The gentleman declines to yield.

Mr. BEEDY. May I ask the gentleman a question?

Mr. BUSBY. Yes.

Mr. BEEDY. The gentleman has read to us what he says is an authentic copy of the last Rome convention. Is it?

Mr. BUSBY. Yes. It comes from the Library of Congress and it is certified.

Mr. BEEDY. What is the date of it?

Mr. BUSBY. The date of it is the 2d of June, 1928.

Mr. BEEDY. Have there been any subsequent conventions?

Mr. BUSBY. No.

Mr. BEEDY. The gentleman from New York has one bearing that same date.

Mr. BLOOM. I have the original convention.



Mr. BEEDY. The committee would like to know what that one is.

Mr. BUSBY. This is absolutely right and there is no question about it. I will be very glad to pass it over to the gentleman.

The CHAIRMAN. The time of the gentleman from Mississippi has again expired.

Mr. VESTAL. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto close in 20 minutes.

The CHAIRMAN. The gentleman from Indiana asks unanimous consent that all debate on this section and all amendments thereto close in 20 minutes. Is there objection?

There was no objection.

Mr. BEEDY. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman and members of the committee, I have been unable to arouse in myself any feeling of alarm at the proposal to incorporate into law the protection of a man in his right for 50 years to the thoughts which he gives the world. At the outset, I think we ought to disabuse ourselves of the idea that there is anything of a monopolistic nature in a copyright. Possibly I may be able to help the committee see that there is a fundamental distinction between an invention and a copyright. When a man is granted a patent by the Government he has the exclusive control of that which his genius has produced. No additional rights can be obtained unless the original inventor or some other person perfects an improvement upon the original idea. An invention may be truly said to savor of monopoly. But not so in the case of a copyright. Again and again one man has conceived an idea, clothed that idea in language, and given it to the world; a generation goes by, and another person, unfamiliar with the fact that a man now gone had conceived a certain idea and had it published in book form, also conceives the same idea. The second individual also gives the thought to the world in book form. The first man could have had a copyright. Let us assume that the second man, with precisely the same idea, can prove that he did not know of the existence of the original book. He can come before a court and say, "This was my idea; I expressed it in my own way, and I ask for a copyright." He can have it. There is nothing in the nature of a copyright that can be said to savor of monopoly. Let us understand this once and for all.

The whole aim and purpose of copyright law is to protect the thoughts of man which he can give to the world either in language, in music, or in art. I myself can not see any reason why this great country of ours which, considering the years of its life, may be said to have given the world its fair share of the fruits of artistic and literary genius, should not protect its people of genius for the same term of years which the experience of older nations has proved to be wise.

I think nobody here should say that this country ought not to protect its people in the right to give the benefit of their thoughts to their heirs or vendees for at least the limited period of time set out in this bill. I subscribe heartily to the proposal to extend the period of protection for a term of years which coincides with the term of years which the experience of mankind in general has proved to be wise and fair. [Applause.]

Mr. CLARK of Maryland. Will the gentleman yield?

Mr. BEEDY. Yes; I yield.

Mr. CLARK of Maryland. I would say to the gentleman that what concerns me most about this section is whether the protection really goes to the producer, as the gentleman has said, or to the publisher. In other words, how many productions are really owned by the producer 28 years after their creation?

Mr. BEEDY. Of course, about all we can do is to give a man his original protection in that which he creates. If he is unable to perceive that it may be of such merit as would insure its life for 50 years and parts with it for a modest sum, that is his lookout. If a vendee of the author

or original producer finds that the years have added value to his purchase, he may sell it again at an added price, and thus he and his vendee are protected. I see no objection to that.

Mr. CLARK of Maryland. But, as a matter of fact, does the gentleman know about what percentage of productions are still owned by the producers after 28 years?

Mr. BEEDY. I do not. But, if the gentleman will pardon me, as a matter of fact I was listening to a suggestion given me by the gentleman from Illinois [Mr. CHIPERFIELD], who is sitting in front of me, namely, that the author or original producer ought to be able to realize the value of that which he leaves behind as measured, for one thing, by the term of years within which his rights are protected by law. A right protected for 50 years after his death would naturally be worth more than one protected for only 28 years or 56 years.

The CHAIRMAN. The time of the gentleman from Maine has expired.

Mr. BLOOM. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would like to explain just what the 28-year term means to the author and to the publisher.

I am going to give you real facts taken from a concrete case that happened in the last two or three weeks. A publisher secures a 28-year copyright. At the end of the twenty-seventh year some one is compelled to write to the register of copyrights in Washington and tell him that he wants to extend the time for 28 years; in other words, he wants a renewal.

Now, if I should write compositions and I should die and leave to my widow and my children only the income from these different compositions, remember that I must know the law and write to the register in Washington that I want to extend the term of the copyright. If I do not do this the Government takes away from me the only thing I have from which I may get an income to live; and for what purpose? Who benefits by it? It is my property or my widow's property, and if you are going to give such a right, whether it is a grant for 56 years or 28 years, or whatever the time may be, give this right at one time, and do not give it with a string attached or with formalities of various kinds attached.

Mr. CLARK of Maryland. Will the gentleman yield?

Mr. BLOOM. Yes.

Mr. CLARK of Maryland. Does the gentleman know what percentage of productions to-day are owned by the producers?

Mr. BLOOM. I am going to answer that question if the gentleman will first let me finish the thought I have in mind.

The Berne convention contains various provisions, and, remember, it is not a copyright convention. The word "copyright" in all the years that the Berne convention has been in existence has never been mentioned at any of the conferences. It is a convention for the protection of literary and artistic works or properties. It has nothing to do with copyrights. It is trying to do what we are trying to do to-day. It is trying to protect the author or the creator of these works and has nothing to do with anything else. The word "copyright" was invented in this country, and in no other country do they use it, with the exception of England.

Mr. Chairman, the correct idea is that whatever we give to them they give to us. If we give them a term of copyright of 10 years, they give us the same thing. If we give a copyright for 28 years, they give that to us. If we give a copyright for 50 years after the death of the author, then they give us the same thing.

We are receiving more in this way than we are giving, because to-day the number of people represented by the Berne convention is at least one billion. So please do not get the idea that we are doing something here in order to give them something. For 50 years we have been trying to enter the Berne convention. It was started 50 years ago by President Cleveland. It was recommended by President Cleveland in a



special message to this Congress, and it was also recommended by President Roosevelt in a special message to the Congress.

I was over there in 1928 and I stayed there all the time with Ambassador Fletcher, and I would like to read you a letter showing what Ambassador Fletcher has said with reference to entering this convention.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. BLOOM. Mr. Chairman, may I ask for five minutes more?

Mr. STAFFORD. Mr. Chairman, I would like to be recognized.

Mr. BLOOM. Then, Mr. Chairman, may I ask unanimous consent to proceed for two additional minutes?

Mr. STAFFORD. Mr. Chairman, reserving the right to object, how much time remains?

The CHAIRMAN. The Chair will state that the time has been limited to 20 minutes. Ten minutes have been consumed by those in opposition to the amendment.

Mr. STAFFORD. If the extension requested does not prevent a 5-minute speech in support of the amendment, I have no objection, but I would like to have some Member have five minutes in support of the amendment.

Mr. LUCE. Mr. Chairman, the time being so restricted, I am sorry to say that I shall have to object.

Mr. STAFFORD. Mr. Chairman, I rise in support of the amendment. There is no difference between an invention and a copyright. An inventor invents a device or process and then sells it to the public on a royalty. The author conceives something and then sells it to a publishing house on a royalty basis. So both are monopolistic in character. The Constitution so recognizes it and places both in the same category and prescribes that these privileges shall be for a limited time.

The gentleman from Texas seeks by sophistry to lead the House to believe that there is a difference. The Merriam Co., that publishes Webster's Dictionary—if the original copyright had not expired on the earlier editions would prevent other publishers from printing these editions which sell for \$1.50 and \$2, instead of the late editions that they sell at from \$4 to \$7. Let me call attention to the editions of English novels printed for Christmas gifts—Vanity Fair, David Copperfield, all of Dickens's works—where the term of the copyright has expired and any publishing house has the right to publish them according to the demand and sell them at popular prices without the payment of royalty to publishers or to the heirs or estate of the deceased author.

Now this is the very crux of the matter. This amendment does not in any wise affect our joining the Berne convention. It only says that we shall prescribe the time under which our own people have the right to secure a copyright.

To listen to the arguments of the gentleman from New York he would lead us to believe that the Americans are seeking some opportunity in Russia or Czechoslovakia or Yugoslavia to sell books, when we all know that all the foreign authors want is the American market of 125,000,000 people.

I protest that this is a strongly monopolistic bill which would permit a copyright of 125 years.

I am speaking for the masses. They say that the author has the inherent right to the productions of his own mind. I deny it. The Supreme Court has said that the right of devolution of property rights results entirely from legislation, and so in this matter it is for the Congress to determine how long we will give the author a monopolistic right to control his publication.

I say that we have prospered well under existing law, with a right to the monopoly for 28 years and a renewal of 28 years. Stick to it so that the general public may have the right to these publications when the period of copyright has expired. We know that the publishing houses generally and not the authors control the copyright. It is the publishing houses that want an absolute monopoly for 100 years or more. The benefits of this monopolistic privilege will go to the publishing houses and the public will be compelled for gen-

erations to pay a tribute to the extent of what the public is willing to pay for the book or composition.

Mr. LANHAM. Mr. Chairman, will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. LANHAM. I call the attention of the gentleman to the fact that the rights of the publishing houses are restricted rather than enlarged.

Mr. STAFFORD. They are enlarged by a term of 75 years longer under the provisions of this bill. That is why the publishing houses want it, and that is why they are back of it. They want this eternal privilege. I am not in favor of granting this monopolistic privilege to any publishing house, no matter how good the creation is, whether it be Shakespeare or Bunyan, or whatever it may be.

To-day the public generally has been profiting after the expiration of the 56-year term. Why should we take away that right of the public and postpone it so that the present generation and future generations shall never get the benefit of some of these popular works, other than at the price fixed by the exclusive publisher? The rights of the public should be considered. Tribute should not be paid for a century and more.

Mr. LUCE. I rise in opposition to the amendment. First, I repeat in substance what I said in the debate upon this matter last June. My personal interest in it is negligible, because no copyright of mine will ever be invaded by any publisher anywhere.

I am chiefly encouraged and inspired to take part in the debate through the fact that I have been brought into close association with Thorvald Solberg, who through the greater part of his active life had been register of copyrights, until he retired last spring, a man who probably knows more about the subject than any other human being in all the world. Our joining the International Copyright Union has been very close to his heart. He has labored for this in season and out of season; he has likewise labored to perfect the copyright law; and to him more than to anybody else is due the measure that is before us to-day. I bespeak of you respect for the judgment of this man, who knows more about this subject than any other living being. I also bespeak from you respect for the work of this committee. This is a long, technical bill.

Mr. STAFFORD. Mr. Chairman, will the gentleman yield?

Mr. LUCE. I regret that I have not the time.

Mr. STAFFORD. I want to cite Mr. Solberg in opposition to that.

Mr. LUCE. The committee has labored long and earnestly over a difficult, technical proposition, which it is impossible to explain in full on the floor of the House. After a somewhat lengthy legislative experience, I feel warranted under such circumstances in advising every Member here to pay respect to the judgment of the committee that knows what it has brought before you, and to assume that, at least prima facie, it is right in its positions and its contentions. Remember, it is quite possible by many amendments to becloud an issue so that there will be doubt and hesitation on every hand. Let that not blind us to the nature of the main question here presented: Shall we join the International Copyright Union? For that alone the support of the bill would be worth while.

The gentleman from New York [Mr. O'CONNOR] asked if there is any other reason to vote for this particular section than the desire to join the International Copyright Union. I tell him yes. There is the desire to do equal justice by every man in this country—to allow the man who creates and who puts on paper the fruits of his creation to enjoy the profits of his labors, just as in the case of every other man who toils.

Mr. CLARK of Maryland. Mr. Chairman, will the gentleman yield?

Mr. LUCE. I have not the time. It is rightly said that the Constitution contemplates a "limited" period. The immediate issue is whether that limit shall be 56 years, as it is now, or a limit with an addition of 10 or 15 years on the average, in order to correspond with the views entertained by the rest of the world. That is the only issue at



the moment—an addition of 10 or 15 years on the average. Yet gentlemen talk about monopoly. I own a house. Have I a "monopoly" in that house? May I not enjoy that house during my lifetime without being labeled a monopolist? May my heirs not enjoy it after I am gone? All I ask for myself and for all others who labor with the pen is the right to the fruit of labor for a reasonable period. That reasonable period heretofore has been held to be 56 years. Is it necessary to say that 65 years or 70 years is outrageously long? Shall we let an addition of 12 or 15 years to the time at present specified wreck this whole bill and so destroy the arduous and long-protracted work of this committee? Shall we thwart the cherished hope of Mr. Solberg, who has brought here the benefits of his years of experience? I say no. I say that such a petty extension of ownership does not justify throwing at those of our people who choose to work with their brains the epithet, "monopolist." You would deny to no artisan, no carpenter, no mechanic, the fruit of the labor of his hands. Why deny the fruits of his labor to a man who works with his brain and gives hours, months, years of toil and study in an attempt to be in that way of service to his fellow men? Why vote that his children may late in life go penniless because some man has risen on the floor of this House and said that an extension of 12 or 15 years is monopolistic and outrageous?

The CHAIRMAN. The time of the gentleman from Massachusetts has expired. All time has expired. The question is on the amendment offered by the gentleman from New York.

The question was taken; and on a division (demanded by Mr. STAFFORD) there were—ayes 14, noes 71.

So the amendment was rejected.

Mr. STAFFORD. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. STAFFORD: Page 12, beginning with line 17, strike out all of the remainder of page 12 and in line 1 on page 13 down to the colon and insert in lieu thereof the following: "The term for which copyright is secured by this act shall be for the life of the author, and if he dies within 50 years from the date of completion of the creation of the work, then thereafter for a period of time to equal a term of 50 years from said date of completion, except that where the author is not an individual, the term shall be 50 years from the date of the completion of the creation of the work; and except that in the case of a work by joint authors, the copyright shall terminate at the date of the death of the joint author who dies first, unless he shall die within 50 years from the date of the completion of the creation of the work, in which event it is to terminate upon the expiration of 50 years from said date of completion of the creation of the work."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin.

Mr. STAFFORD. Mr. Chairman, I understand that debate is exhausted.

The CHAIRMAN. Debate is closed. The question is on the amendment offered by the gentleman from Wisconsin.

The question was taken, and the amendment was rejected.

#### ENGLAND, ARK.

Mr. PARKS. Mr. Chairman, I ask unanimous consent that my colleague from Arkansas [Mrs. OLDFIELD] be permitted to proceed for five minutes out of order.

The CHAIRMAN. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mrs. OLDFIELD. Mr. Chairman, ladies, and gentlemen, in view of the fact that a number of Members of this House and many on the outside have asked me if conditions in my State are really as serious as have been reported, I want to say that the situation is distressing and most grave, with cold, sickness, and actual starvation present in many sections. I know that you do not understand that the situation is as serious as it is. No one on the outside can understand how such ordinarily energetic and thrifty people could have reached that condition, but our people have suffered a repetition of disasters since the 1927 flood and they have become penniless by the thousands. I am sure you will agree with me that it is a national disgrace to permit any of our people to continue to suffer hunger in this land of plenty, but such

is the case now in Arkansas, and something must be done and at once not only to save the people of Arkansas but to save our national honor also.

Some Members object to passing the \$15,000,000 appropriation for food. They call it the dole system. Under ordinary conditions I also would oppose it, but under ordinary conditions Arkansas would not be compelled to make the appeal, but this is an extraordinary situation, and I feel that the end sought to be accomplished justifies any honorable means. We should act speedily on the Caraway amendment, as it may take a long time to get relief through the Red Cross by individual contributions.

There is no communism with us in Arkansas, I am proud to state. It is a matter of record that Arkansas has as few foreign-born citizens as any other State in the Union. They are truly and purely American, proud, long suffering, and forbearing, but please describe for me, if you can, the character of an individual classified as a man who would not call for aid when his babies are crying for bread. I have received letters from reliable sources stating that babies are being fed on turnips and turnip greens and without much seasoning. It makes me truly sick at heart to read from day to day of the terrible conditions in my home State, so I am making this appeal to you for prompt action in providing food to sustain life of the suffering thousands in Arkansas.

No one can accuse me of attempting to play politics. My only interest is the broad, unselfish, humanitarian interest that I know we all have when the facts are fully understood. I care not how the situation is met, but it must be alleviated, and that most speedily, otherwise disease and actual starvation will promptly remove the necessity for a delayed futile gesture. You may say, possibly, there are a few isolated cases, but I assure you that suffering is now general in my State. It has been said that the Red Cross is amply prepared and is now taking care of the needy. Do you think 2 cents per meal is enough to furnish sufficient food of any kind to sustain life and guard the health? This is the amount the Red Cross is furnishing per meal for each person. The Red Cross has stated it has not sufficient funds to give more, and I want to say in this connection that I am delighted that the President has made an appeal for contributions to the Red Cross for this purpose. While we have been sitting here idle and ignoring the plea for assistance for food thousands and thousands have been growing weaker day by day from hunger. Whether it is necessary to appeal for relief for the North, South, East, or West, I know that our people throughout the Nation will never stop to consider the mere location. They have never done so in a matter of this nature and I know they will respond in this instance.

#### COPYRIGHT LAW

The Clerk read as follows:

SEC. 13. In the case of any posthumous work, such period shall be 50 years from the date of the death of the author.

Mr. BUSBY. Mr. Chairman, I move to strike out the last word. I would like to ask the chairman of the committee what beneficial purpose this section serves?

Mr. VESTAL. It does not serve any. I am willing for it to go out. It is redundancy.

Mr. BUSBY. I move that the section be stricken out.

The CHAIRMAN. The gentleman from Mississippi [Mr. BUSBY] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. BUSBY: Beginning in line 9, page 13, strike out all of section 13.

The amendment was agreed to.

The Clerk read as follows:

SEC. 14. The copyright subsisting in any work when this act goes into effect shall be continued at the end of the subsisting term until the expiration of 50 years beyond the author's death, and such continuation of the copyright to the extent of any extension over and above the term of 28 years subsisting on the date when this act takes effect and any renewal thereof registered prior to said date shall vest in the following persons: (a) If an application for renewal of the copyright shall have been duly registered prior to the date when this act takes effect, then such continuation shall vest in the person or persons who under the act heretofore in force were entitled to said renewal and extension of the copyright in such work; and (b) in all other cases such



continuation shall vest in the author, if living, and if the author be not living, then in the author's executors or testamentary trustees, as the case may be, or, if there be no such executors or trustees, in a duly appointed administrator with the will annexed, and, in the absence of a will, then in the administrators or other legal representatives of said author's estate: *Provided*, That where, prior to the date when this act takes effect, the author or, if he be not living, the person or persons who upon his death became entitled thereto shall have parted with any or all of the author's rights for the first term under the act heretofore in force, and shall have agreed to part therewith or shall have parted therewith for the renewal term under said act, on a royalty basis, the assignee or licensee of such right or rights shall be entitled thereto throughout the full term provided by this act, upon condition that he pay royalties at the agreed rate and in the agreed manner to the author, if living, or if dead, to the person or persons in whom the continuation of the copyright shall vest as above specified, during the full term provided by this act; but this proviso shall not apply unless the said assignee or licensee shall have substantially fulfilled his contract with said author and/or with the person or persons (if any) who succeeded to said author's rights: *Provided further*, That where, prior to the date when this act takes effect, there has been an outright purchase of any right or rights (for a lump sum paid and not on royalty) for said first term and the author or, if he be not living, the person or persons who upon his death became entitled thereto have agreed to part therewith or have parted therewith for said renewal term, the assignee or licensee of such right or rights shall be entitled thereto throughout the remainder of the term provided by this act upon performance by him of such conditions as may be determined by an agreement between the purchaser and the author, if he be living, or his assignees or representatives, if he be dead, entered into at least six months before the expiration of the subsisting term, or, in the absence of such agreement, as may be determined by a court of competent jurisdiction, as justice may require: *Provided further*, That in the case of any work the subsisting copyright of which was first secured by an employer for whom such work was made for hire or by a corporate body (otherwise than as assignee or licensee of the individual author) the copyright shall terminate 56 years from the date of first publication.

Mr. VESTAL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. VESTAL: On page 13, line 15, strike out the words "death and such" and insert the following: "death: *Provided*, That in no case shall copyright terminate before the expiration of 56 years from the date of first publication. Such."

Mr. VESTAL. This is simply not to lessen the term of copyright in existence under 56 years.

Mr. STAFFORD. As I understand the phraseology of this bill, where an author has taken out a copyright and he is still living, though 50 years have expired, he is entitled, under the provisions of this act, to another 50 years?

Mr. VESTAL. Fifty years from the date of the death of the copyright owner.

Mr. STAFFORD. Even though the original 50 years have expired?

Mr. VESTAL. Oh, no. We do not revive any work that is in the public domain; but any copyright that is in existence now we extend that copyright 56 years from the death of the author.

Mr. STAFFORD. I direct the attention of the gentleman to the following language in section 12:

The term for which copyright is secured by this act shall be for the life of the author, if living.

Mr. VESTAL. Yes.

Mr. STAFFORD. I thought if any author had taken out a copyright and it had expired he would still be entitled to the remaining term during his life and 50 years beyond.

Mr. LANHAM. Will the gentleman yield?

Mr. STAFFORD. I yield.

Mr. LANHAM. This amendment is to take care of those cases in which the copyright now subsisting would be shortened by the passage of this bill, when, under the copyright they have, they are allowed a longer term.

Mr. STAFFORD. How can they be shortened under the terms of this bill?

Mr. LANHAM. I will explain. Suppose a man last year copyrighted a work and he dies this year, then his copyright would extend 50 years from the date of his death, for a total of 51 years; whereas under the date under which he

copyrighted it last year he would be entitled to his copyright for 56 years.

Mr. VESTAL. That is the purpose of it.

Mr. STAFFORD. I agree that the gentleman is giving every consideration to the authors and that an additional five years should certainly be provided for, otherwise it would do a grievous wrong to the author or to the publishing house.

Mr. LANHAM. It does not increase the term of the copyright that the gentleman has under existing law.

Mr. STAFFORD. I see whereby grievous wrong would be done to a publishing house if this amendment were not adopted.

Mr. SNELL. I move to strike out the last word, Mr. Chairman, for the purpose of asking the chairman a question.

I have received a letter from a constituent this morning who wants this information. He says:

This proposed law was based on the theory of automatic copyright, which means that any literary or musical work may be copyrighted by its author without registration or notice of the copyright.

He feels that such registration or notice should be given to protect people throughout the country. Will the chairman please inform me what the situation is, and whether it is covered or not, and if my understanding is correct?

Mr. VESTAL. No. It is not covered. There is no notice of copyright under the automatic copyright, but we have inserted in this bill the innocent infringement clause. While it is not necessary for anyone to register their work, they will under the innocent infringement clause practically every one register, because if they do not do it they can not get damages. That is a formality that must be waived if we are to enter the Berne convention.

Mr. SNELL. This law says they shall be subject to heavy damages if they do infringe on this.

Mr. LANHAM. Will the gentleman yield?

Mr. SNELL. I yield.

Mr. LANHAM. As a matter of fact, the practice would be for every man to put a notice of copyright on his work, if it is of any importance, because only thereby is he protected against the innocent infringer.

Mr. SNELL. Then there is no obligation or opportunity for indictment—

Mr. LANHAM. No. Because the automatic copyright law permits copyright anyway, and that formality must be dispensed with in order to enter the Berne convention.

Mr. SNELL. Then how can you bring a proceeding against an innocent offender?

Mr. LANHAM. If there is no notice of copyright, then the one who infringes anything innocently may be only charged with the proper license fee during that time, but with no damages.

Mr. CHINDBLOM. Will the gentleman yield?

Mr. SNELL. I yield.

Mr. CHINDBLOM. But such infringer will have to show that he is an innocent infringer?

Mr. LANHAM. Oh, absolutely.

Mr. CHINDBLOM. You will put everybody to the necessity of defending a proceeding against him?

Mr. LANHAM. Why, to be sure.

Mr. CHINDBLOM. Without any notice of the copyright; without any registration or notice of the copyright you will compel every person who may be an innocent infringer to defend himself against action, unless you amend the present law.

The CHAIRMAN. The gentleman from New York has the floor. To whom does the gentleman from New York yield?

Mr. SNELL. I yield to the gentleman from Mississippi [Mr. BUSBY].

Mr. BUSBY. On page 17 of the bill, section (d), the gentleman will find this language:

In any action for infringement of copyright in any work, if defendant prove that he was not aware that he was infringing or has been subjected to fraud or substantial imposition by any third person or persons other than one of said defendant's



employees, and in either case that such defendant has acted in good faith, the plaintiff shall not be entitled to any remedy against such defendant other than to recover an amount equivalent to the fair and reasonable value of a license, but not less than \$50 or more than \$2,500.

Mr. SNELL. That is whether he is an innocent infringer or not?

Mr. BUSBY. This is the innocent infringer. The other is \$250 to \$10,000, where he knows he is an infringer.

Mr. SNELL. That is not the information I understood the gentleman from Indiana to give me.

Mr. BUSBY. I am reading from the bill.

Mr. VESTAL. The language is:

The plaintiff shall not be entitled to any remedy against such defendant other than to recover an amount equivalent to the fair and reasonable value of a license, but not less than \$50 nor more than \$2,500.

Of course, if it is less than \$50 there will be no suit.

Mr. SNELL. The bill makes it less than \$50?

Mr. VESTAL. Yes. That is as to an innocent infringer who uses some work.

Mr. SNELL. It seems to me that is quite a fine on a fellow who accidentally uses some other man's work.

Mr. STAFFORD. I would like to ask whether under the terms of this act they will also be subject to the payment of the costs and attorneys' fees?

Mr. VESTAL. No.

Mr. LANHAM. The gentleman from New York will notice that this is a great reduction over the amount specified in the present law.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. SNELL. Mr. Chairman, I ask unanimous consent to proceed for two additional minutes.

The CHAIRMAN. Without objection it is so ordered.

There was no objection.

Mr. LaGUARDIA. Will the gentleman yield?

Mr. SNELL. Yes.

Mr. LaGUARDIA. I think this will clear it up, that in the case of an innocent infringer, of course, he has had the benefit of it. Then, as the gentleman from Indiana has stated, the party infringed against has the right to recover an amount equivalent to the fair and reasonable value.

Mr. BURTNESS. Of what?

Mr. LaGUARDIA. Of the benefit derived; but it can not exceed \$2,500.

Mr. SNELL. Then they would have to have a lawsuit over it every time?

Mr. LaGUARDIA. They do now.

Mr. SNELL. So that is not any change?

Mr. VESTAL. No change at all.

Mr. CHINDBLOM. Except that now everybody can find out what is copyrighted.

Mr. SNELL. While under the new bill you can not.

Mr. CHINDBLOM. You will never know.

Mr. LaGUARDIA. How can he make a copy if he does not know? He can not create it out of the air?

Mr. SNELL. There is no proof it is copyrighted.

Mr. LaGUARDIA. No; because it is automatic; and that is absolute proof.

Mr. BLOOM. He knows it does not belong to him.

Mr. VESTAL. May I say this to the gentleman from New York: The gentleman does not have his name on his automobile, yet I know it is his and I know it is not mine without the gentleman's name being put on it. I know what is mine, and when a man goes and takes something that does not belong to him, he knows it belongs to somebody else.

Mr. SNELL. There are a great many things that are not copyrighted, are there not?

Mr. VESTAL. Certainly.

The CHAIRMAN. The time of the gentleman from New York has again expired.

Mr. BUSBY. Mr. Chairman and members of the committee, I would like to say that the gentleman from New York [Mr. SNELL] has touched one of the hard places in the legislation we are now considering. At the present time we

have a combination of music copyright holders who say they compose 80 per cent of all the music there is in the country. They have an individual who is at the head of their organization, and under contract he has transferred to him all of these compositions. They can not go into court; he is the only one who can go into court. That combination has a supermonopoly over all of these copyrights. They go out and find a man playing a Victrola record and they find the music from which the record is made has a copyright on it. It happens to be in a store, a barber shop, or somewhere else where the party runs a public business. Under the provisions of our present law the penalty is \$250, whether innocent or not. Now, in such a case, a man is dickered with by the agent of this monopoly. This agent says to him, "Of course, the least we can recover is \$250, attorneys' fees and costs, but if you will come across with just a part of that, \$150 or \$90, we will license you." So they have a license bureau set up, and they intend to use the \$50 minimum proposition contained in this bill as a cudgel with which to club a fellow into submission and into making a payment on a thing which is copyrighted but for which he has already paid.

Mr. SNELL. Will the gentleman yield?

Mr. BUSBY. Yes.

Mr. SNELL. Under the present law, according to the gentleman's statement, they are notified about the copyright.

Mr. BUSBY. Yes.

Mr. SNELL. But that is not required under the proposed law.

Mr. BUSBY. That is right. They catch them blindly under the proposed law.

Mr. SNELL. I understood a while ago that there was no difference between this and the existing law.

Mr. BLOOM. There is no difference as regards the infringer.

Mr. BUSBY. I would like to go further and suggest that in no country do we find in the copyright law a combination such as this Composers, Authors, and Publishers' League given the power to fix the charges against innocent or intentional infringers. This power is placed in a board that stands between the public and the complaining party and this board adjusts the differences. But these folks in this city went out last year and said to a radio station here, "You pay us \$2,000 and then if you chance to use any of our music it will be all right." This year they went back to that same broadcasting station and said, "You will have to pay us \$5,000 this year because we have revised our schedule upward."

There is a gentleman that has a little moving-picture show that might or might not use their music, and there is a whole bunch of checks here that I will show you after a while, showing that they have "licensed," so to speak, this individual.

Under this clause where there is a minimum recovery or a statutory fixed penalty that goes to this league, and not by way of fine, they go out and dicker with the people whom they are oppressing, and there is nothing for the people who use music to do but come across, and every one of you has the same situation in your districts.

Mr. BLOOM. Will the gentleman yield just with reference to the price fixed? Does not the gentleman know that the price fixed for moving-picture theaters or any other theaters in the country is 10 cents a seat per year.

Mr. BUSBY. Ten cents a year is fixed arbitrarily by this organization and if you have 500 seats they say they will fix the price at \$50. No matter how many people attend or how few people attend, they fix the price and there is no alternative for them except to pay it. If you are going to retain these minimum cudgels in the law of our country—

Mr. BLOOM. What does the moving picture get for the \$50?

Mr. BUSBY. I can not go along arguing with the gentleman from New York [Mr. BLOOM] and the gentleman from Texas [Mr. LANHAM] on this side and at the same time discuss the bill with gentlemen on the other side of the House.



I only wanted to answer the question of the gentleman from New York [Mr. SNELL] by saying that this is an oppressive thing and the gentleman has touched the hard spot in this proposed law, and I hope the gentleman will examine into it further.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

ENGLAND, ARK.

Mr. GLOVER. Mr. Chairman—

The CHAIRMAN. For what purpose does the gentleman from Arkansas rise?

Mr. GLOVER. Mr. Chairman, I rise for the purpose of asking unanimous consent that my colleague the gentleman from Arkansas [Mrs. WINGO] may have the Clerk read a telegram which she has just received from a friend of hers at England, Ark., on the same subject about which we had an address from the gentlewoman from Arkansas [Mrs. OLDFIELD] a moment ago. I ask that the telegram be read by the Clerk.

The CHAIRMAN. The gentleman from Arkansas asks unanimous consent that a telegram received by his colleague the gentlewoman from Arkansas [Mrs. WINGO] may be read by the Clerk. Is there objection?

There was no objection.

The Clerk read as follows:

ENGLAND, ARK., January 12, 1931.

EFFIEGENE WINGO:

Forty-three men drove up to our store, came in, and stated they have come for something to eat, and unless it was given they would take it. Ben asked them to have patience and told them he thought they would get food. They then went across street to mayor's office, where a crowd of four or five hundred gathered. They were assured that some arrangements would be made. There was no violence. The 43 men who started the drive were mostly customers of ours, and honest, hard-working men. Two hundred and sixty-seven families were fed that day. Fourteen hundred and forty-four families fed up to Saturday night last. Condition serious.

Mrs. BEN HIGH.

#### COPYRIGHT LAW

Mr. VESTAL. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto do now close.

The CHAIRMAN. The gentleman from Indiana asks unanimous consent that all debate on this section and all amendments thereto do now close. Is there objection?

Mr. BUSBY. Mr. Chairman, reserving the right to object, I would like to say to the Chairman that there is a question I would like to have answered with regard to the provision as to the time a copyright is to extend, as contained in this particular section.

Under this reservation I will call attention to page 15, line 16, after the word "hire," "or by a corporate body—otherwise than as assignee or licensee of the individual author—the copyright shall terminate 56 years from the date of first publication."

This is with respect to corporations, as I understand it. Now, in line 19, page 12, the length of copyright is given as 50 years after the death of the author, except where the author is not an individual. If that is not a corporation, whom does the bill refer to?

Mr. LANHAM. Will the gentleman permit me to explain?

Mr. BUSBY. Yes. Let me finish by stating that the term then shall be 50 years. Is that an inconsistency?

Mr. LANHAM. It is not an inconsistency. The provision referred to by the gentleman on page 15, the pending section, relates to a subsisting work on which they would have 56 years from the date of first publication. The other relates to copyrights which shall take effect after the enactment of this measure. So, this provision has reference to subsisting works and not to works to be copyrighted under this proposed act. In other words, we do not take from them any rights they have under existing law.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Clerk read as follows:

#### INFRINGEMENT OF COPYRIGHT AND REMEDIES

SEC. 15. If any person shall infringe the copyright in any work protected under the copyright laws of the United States, such person shall be liable—

(a) To an injunction restraining such infringement, except as otherwise provided in this act: *Provided, however,* That no temporary restraining order shall be issued which would prevent the publication of a newspaper or periodical: *And provided further,* That in case of a newspaper or periodical reproduction of a copyrighted photograph, no injunction shall issue.

(b) To pay such damages to the owner of the right infringed as he may have suffered due to the infringement, as well as all or such part of the profits which the infringer shall have made from such infringement as the courts may decree to be just and proper; and in proving profits the plaintiff shall be required to prove only sales, rentals, license fees, and/or any other revenue derived from any disposition of an infringing work, and the defendant shall be required to prove every element of cost which he claims.

(c) To pay, at the option of the owner of the right infringed, in lieu of actual damages and profits, such statutory damages as to the court shall appear to be just: *Provided,* That such statutory damages, in the case of an unauthorized dramatic performance, or of an unauthorized motion-picture exhibition with or without sound and/or dialogue, or the unauthorized performance for profit of a musical work, shall not exceed the sum of \$10,000 nor be less than \$250; and in the case of an unauthorized newspaper or periodical reproduction of a copyrighted photograph, shall not exceed the sum of \$200 nor be less than \$10; and in any other case shall not exceed the sum of \$5,000 nor be less than \$100; and such damages shall in no case be regarded as a penalty.

(d) In any action for infringement of copyright in any work, if defendant prove that he was not aware that he was infringing or has been subjected to fraud or substantial imposition by any third person or persons other than one of said defendant's employees, and in either case that such defendant has acted in good faith, the plaintiff shall not be entitled to any remedy against such defendant other than to recover an amount equivalent to the fair and reasonable value of a license, but not less than \$50 nor more than \$2,500: *Provided, however,* That this subsection shall not apply, in the event of registration of copyright or recordation of an instrument relating to or affecting the same or any right therein, prior to such defendant's entering into or upon the undertaking which results in such infringement, or if the work alleged to have been infringed be a published work published with authority from the copyright owner, if notice of copyright be affixed thereto; or if the work alleged to have been infringed be a dramatic work, other than a motion picture, if such work has had a first-class public production in the United States of America of at least one week in a town of not less than 100,000 population.

(e) In case of the infringement of any creation of an author (except a dramatico-musical or musical composition) by any person or corporation engaged solely in printing, binding, or manufacturing the same in printed form, where such infringer shall show that he was not aware that he was infringing and that he was acting in good faith, and that such infringement could not have been reasonably foreseen, the person aggrieved shall be entitled only to an injunction against future printing, binding, and manufacturing the same in printed form, and to the delivery up of all such printed, bound, and manufactured material, and shall not be entitled to any profit made by such infringer from his contract or employment to print, bind, or manufacture in printed form, nor to damages, actual or statutory, against such infringer: *Provided,* That in case such printer is also the publisher, distributor, or seller of such creation, or in partnership or regularly engaged in business with such publisher, distributor, or seller, or is in any wise directly or indirectly interested in the publication, distribution, sale, or exploitation of such creation (other than as derived solely from his contract or employment merely to print, bind, or manufacture the same in printed form) or in any profits to be derived from such publication, distribution, sale, or exploitation, then the person aggrieved shall be entitled to all the remedies provided by this act, and the immunity granted by this subsection (e) shall not apply: *Provided,* That any injunction against a newspaper publisher shall lie only against the continuation or repetition of such infringement in future issues of such newspaper, but not against the completion of the publication and distribution of any issue of such newspaper where actual printing of such issue has commenced; nor, where such actual printing has commenced, shall any order be granted to sequester, impound, or destroy the issue containing such infringing matter.

(f) In the event that any advertising matter of any kind carried by a newspaper or periodical shall infringe any copyright work, where the publisher of the newspaper or periodical shall show that he was not aware that he was infringing and that such infringement could not reasonably have been foreseen, the person aggrieved shall be entitled to an injunction only before actual work of manufacture of the issue has commenced and only against the continuation or repetition of such infringement in future issues of such newspaper or periodical, but shall not be entitled to any profit made by such publisher from his contract or employment to carry such advertising matter, nor to damages, actual or statutory, against him: *Provided, however,* That no injunction shall lie against the completion of the publication and distribution of any



issue of such newspaper or periodical containing alleged infringing matter where actual printing of such issue has commenced: *Provided further*, That this clause shall in no wise limit the remedies of the person aggrieved against the advertiser, advertising agency, or the person or corporation responsible for the infringement: *Provided further*, That if the publisher of the newspaper or periodical is in any wise interested in the commodity or subject matter advertised, or is the advertiser or advertising agency, or engaged in business with the advertiser or advertising agency, in such wise that the publisher is entitled to any profits or benefit from the sale of the subject matter advertised, or from the handling or placing of such advertising matter (other than profits derived by the publisher merely from his contract or employment to run such advertising matter in his newspaper or periodical), then the immunity granted by this subsection (f) shall not apply.

The following committee amendments were read and agreed to:

Page 15, line 25, strike out "section" and insert "act."  
 Page 16, line 2, strike out the word "daily," and after the word "newspaper" strike out the colon and the words "or periodical."  
 Page 19, line 15, strike out the word "actual."  
 Page 19, line 24, strike out "actual printing" and insert "work of manufacture."

Mr. VESTAL. Mr. Chairman, I move to strike out the last word. This section is based on section 25 of the present law and in many respects conforms to that section. The present law relating to infringement has been found impracticable and defective. It is unfair because it gives the successful plaintiff all the infringer's profits. This bill provides that only such profits as the court may decree shall be awarded to the plaintiff. In other words, under the present law all profits must go to the person infringed. Under this bill we have written that only that portion of the profits that shall be deemed proper by the court shall go to the man whose property is infringed.

In case a motion picture has been infringed we have raised it to \$10,000, and no objection has been made by any motion-picture company.

In case of a copyright photograph the amount has been reduced to \$10. We have reduced it to such an extent that no one would want to go to court for \$10.

In all other cases the minimum has been reduced to \$100.

In case of an infringement where there is no notice or no record of copyright, the infringer may pay nearly the entire value of the license. We placed the minimum amount at \$50 and the maximum at \$2,500. Under the present law the printer who had printed copyrighted material was held as an infringer, and this bill relieves him of damages which he would otherwise be subjected to. This is a wise provision of the bill, because it is impossible for a man who merely sets type to know that his customer has not purchased the material in good faith. Therefore he is relieved absolutely, and, in the same way, the newspapers and periodicals are relieved from the penalty of carrying advertised matter which may be an infringement when they are innocent that such advertising may be an infringement. These are the changes in the old law that we have put into this section, believing that it is much better than the old law, and I hope that the section will be adopted without amendment.

Mr. STAFFORD. Does not the gentleman believe that before a person should be mulcted in damages notice should be given that it is a copyrighted work? I have prepared an amendment which will cure that defect, which would entitle a person to damages only where notice has been given that the matter has been copyrighted. The proposed amendment I suggest is on page 16, line 6, after the word "pay," to strike out the words "such damages," and in line 7, after the word "infringed," insert the following:

If such owner shall have placed on such work the notice described in section 34 hereof, or shall also have obtained registration thereof under section 36 hereof, such damages.

What objection can there be by the person who has the right to exact damages that he shall be required to make an imprint of the fact of copyright or that it is registered?

Mr. VESTAL. I will ask the gentleman from Iowa [Mr. LETTS] to answer that.

Mr. LETTS. I call attention to this fact. Certainly the gentleman from Wisconsin would agree that where one

would willfully and knowingly infringe he ought to pay damages?

Mr. STAFFORD. Oh, yes; that is taken care of in the following section.

Mr. LETTS. That is taken care of in the language of the bill, and before any court would assess damages and award the profits or any part of the profits the court would have to find that the infringement was willful.

Mr. STAFFORD. But the bill does not so prescribe. The bill prescribes a minimum of damages, whether the infringement is willful or not.

Mr. LETTS. We have divided that into two sections. If it is willful, then the court may assess all damages and may allow such part of the profits as the court finds is just and proper under the circumstances. But where it is unintentional—

Mr. STAFFORD. There you require the court to inflict a certain amount. I say before any amount should be inflicted the person having the copyright should imprint on his article notice to the public at large that a copyright is claimed.

Mr. LETTS. The gentleman will realize that even where one has used copyrighted works innocently, nevertheless he should be willing to pay as much as the reasonable charge for a license if he had applied for it.

Mr. STAFFORD. No; I can not go to that extent. The person who used it might not have wished to use it if he knew that it was copyrighted.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. MORTON D. HULL. Mr. Chairman, I move to strike out the last word to ask whether, under this bill, if it shall be enacted into law, the individual who acquires a right under it has a vested right which can not be taken away by subsequent act of Congress. Will an act of Congress hereinafter passed constitute due process of law so as to be able to shorten up the further period of special ownership of this right? Would it become a right that can not be modified by subsequent act of Congress? Does the right acquired under this bill or under any copyright law become a vested right in the individual when it once accrues so that it can not be modified so far as that owner is concerned by a subsequent act of Congress?

Mr. LANHAM. That relates to the general proposition of retroactive measures with reference to vested rights.

Mr. MORTON D. HULL. That is the question that I asked—whether this is a vested right.

Mr. LANHAM. Copyrights have been held to be property. This bill, for instance, in the extension of the term, makes this provision, that 28 years after the death of the author the right of contract reverts to those who succeed to the author's right, and for the remainder of the time a new agreement must be made, so that there is that extended privilege given in this bill now.

Mr. MORTON D. HULL. That does not answer the question. This bill gives the exclusive use of certain ideas in the form in which they are presented for a period of the author's life, and for the further period of 50 years for the benefit of his family. Can a subsequent Congress come in and modify the rights that have been acquired under this act?

Mr. LANHAM. Those rights would be determined by contract, would be determined by the court in accordance with the general principles of contract.

Mr. MORTON D. HULL. But it is not a contract so far as the individual is concerned. He acquires a copyright and he has the absolute right to do it under this law.

Mr. LANHAM. The gentleman means if his right is infringed?

Mr. MORTON D. HULL. Can the right be infringed by the act of Congress itself?

Mr. CHINDBLOM. Can Congress change it?

Mr. BEEDY. Mr. Chairman, if the gentleman will yield, unquestionably a right granted to a man for 50 years to protect his thoughts as expressed in writing or in any form of art is just as much a vested right as to pass title under the law to an individual to a piece of land, and no Congress



can afterwards come in with an act and infringe that right, because, in my opinion, it would be unconstitutional, just as much as it would be to divest a man of his title to real estate without compensation.

Mr. MORTON D. HULL. But when that provision was put into our Constitution with reference to taking property without due process of law, property had a definite meaning. It applied more particularly to lands and chattels and articles of that kind. The Constitution gave the right to Congress to create a new form of property.

Mr. BEEDY. And our courts have subsequently held that that was a property right.

Mr. MORTON D. HULL. That is the question I wanted answered.

Mr. LANHAM. I stated that, that the courts have held that copyrights are property.

Mr. BEEDY. This question is whether a subsequent Congress can modify this law if this shall become a law and cut down, for instance, the period from 50 years to 35 years—whether that would be constitutional. It would not be constitutional, I submit, as to the particular individual.

Mr. LANHAM. There would be no disposition to do it, just as in this bill we are not shortening the term of anyone who holds a copyright.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. CHINDBLOM. I rise in opposition to the pro forma amendment.

Mr. Chairman, I would like to propound a question to some member of the committee. We are met in these arguments constantly with references to literary copyrights. As for myself, that question is not involved. It is the effect of this bill, as the members of the committee well know, upon mechanical reproduction and broadcasting that particularly interests some of us. I want to ask this question: Under paragraph (d), on page 17, if I were down in southern Iowa and had a small broadcasting station under license from the Federal Radio Commission and a lady came in there and sang a song over that broadcasting station and it should transpire that she had violated a copyright, that she had no right to use that song, but she produced it over my instrument, under that law could not the owner of that copyright invoke paragraph (d) on page 17 and say that although I was an innocent infringer, did not know by whom the piece was copyrighted, but by reason of the fact that the performance had been given over my radio station, I would be subject to a recovery equivalent to a fair and reasonable license value, which should not be less than \$50 nor more than \$2,500?

Now, you speak of that "not less than \$50" as a virtue, because nobody would ever ask for less than that. I think the effect of this provision is that such license fee must be at least \$50, and can not be less than that. Now, would that be a violation?

Mr. LANHAM. Under the present law it is \$250.

Mr. CHINDBLOM. Not such a violation, because now I can ascertain whether this music has been copyrighted. It is registered now and it is marked, and I can know whether it is music that is copyrighted; but after this law there will be no way in which I can know who has written or produced it. I will not know who the author is, and if the lady comes in and says she has a right to sing it, she will sing it.

Mr. LANHAM. The gentleman does not mean to say that in his section of the country the radio stations make no further investigation than that of what they put on the air?

Mr. CHINDBLOM. I said if I were the owner of a small broadcasting station in the country somewhere where I did not have the facilities which the large broadcasting stations have.

Mr. LANHAM. Then, as the operator of a broadcasting station out in the country somewhere you would have a contract by the year, permitting you to use all copyrighted music, and thereby you would not be subject to any penalty whatever.

Mr. CHINDBLOM. Does the gentleman from Texas attempt to write into this law the contract which the organization is to give to broadcasters?

Mr. LANHAM. Can the gentleman name a broadcasting station in the United States who has not a contract upon copyrighted work?

Mr. CHINDBLOM. The gentleman does not answer my inquiry by referring me to what exists now.

Mr. LANHAM. I am telling the gentleman what the practical situation is. They have contracts for the purpose of using copyrighted music. Otherwise they would be subject to this \$50 license fee.

Mr. BUSBY. Will the gentleman yield?

Mr. CHINDBLOM. I yield.

Mr. BUSBY. The truth is that if a broadcasting station has a license, as this monopoly calls it, and a lady comes in and sings a song that is copyrighted and she does not have a license, she is still obligated to pay the \$50, notwithstanding the station has a license.

Mr. CHINDBLOM. Well, is not the broadcaster liable as well?

Mr. BUSBY. The broadcaster is made fair weather, but the lady or a 2-piece string band, if it plays Turkey in the Straw under one of their renditions which is copyrighted, is liable to pay \$50.

Mr. BLOOM. Will the gentleman yield?

Mr. CHINDBLOM. I yielded to the gentleman from Mississippi.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. CHINDBLOM. Mr. Chairman, I ask unanimous consent to proceed for two additional minutes in order that the gentleman from Mississippi [Mr. Busby] may conclude his answer to my question.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CHINDBLOM. I will ask the gentleman from Mississippi to complete his answer to my question.

Mr. BUSBY. The whole purpose is that the radio station has come to this organization headed by Gene Buck and Nathan Burkhan, and make fair weather with them. I told the committee a little while ago that all radio stations have that to do or they could not exist in the face of these statutory damages. They have to do it, as the gentleman says, but everybody who performs over that radio station after it has a license also has to make fair weather if they use copyrighted music.

Mr. CHINDBLOM. I was speaking of the little radio station in the small community, which made arrangements with this organization of which the gentleman speaks.

Mr. BUSBY. It does not make any difference how small they are, they get them all, and if they use anything that is copyrighted, then it is subject to these penalties, but it is impossible, under this bill, for anybody to give to the public domain, after this becomes a law, any literary production that is not copyrighted. I challenge you to deny that the public can receive at the hands of any person, a literary production that is not copyrighted after this bill becomes law, be it a songbook or what. The public is bound hand and foot, and that answers the other part of the gentleman's question.

Mr. LaGUARDIA. Mr. Chairman, I move to strike out the last word.

Mr. VESTAL. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto close in 15 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

Mr. BUSBY. Reserving the right to object, I would like to explain to the gentleman from Indiana that in good faith I have an amendment striking out section (c) and an amendment striking out section (d), which deal with statutory damages, which are nothing more than fines to be paid to this organization.



Mr. VESTAL. Well, how much time does the gentleman want to discuss the amendments?

Mr. STAFFORD. Reserving the right to object, do you not realize that when you limit time a party is not privileged to discuss his amendment?

Mr. BUSBY. The gentleman from New York [Mr. SNELL] pointed out the trouble. I think we can let it run along for a little while at least.

Mr. VESTAL. Very well, Mr. Chairman. I withdraw the unanimous-consent request.

Mr. LaGUARDIA. Mr. Chairman, there have been repeated insinuations made during the present and previous discussion of this bill as to the standing and purpose of the American Society of Composers, Authors, and Publishers and some of their officers and personnel.

I thought that was completely answered by the gentleman from Texas [Mr. LANHAM] on July 2, 1930. It is manifestly unfair for these insinuations to continue when this organization is simply a professional organization, just like a bar association or a medical society, looking after their own interests, and they have every right in law, morals, or ethics to do so. [Applause.]

Statements have been made and names have been mentioned.

Mr. BUSBY. Will the gentleman yield?

Mr. LaGUARDIA. I refuse to yield.

Mr. BUSBY. I will prove everything I have alleged.

Mr. LaGUARDIA. The gentleman has referred to Mr. Gene Buck. I know Mr. Buck and have known him for a great many years. He stands very high in his city, he stands high in his profession, he stands high in his community, and I am proud to call him my friend. The gentleman referred to Mr. Burkhan. I know him. He is not my political friend. He is politically opposed to me and happens to be in the same territory I represent. Nevertheless, Mr. Burkhan's connection with this society has always been ethical, and it is beyond any criticism or any reproach. Why, gentlemen, John Philip Sousa, who enjoys the admiration and confidence of the American people, is the vice chairman of this organization. Another officer is the brother of a Member of this House, Oley Speaks, the brother of General SPEAKS, whom we all love and admire. It is hitting below the belt to make these insinuations.

Of the same nature is the Authors' League of America, which is sponsoring this bill. Among the members of this league are George Ade, Ring Lardner, Irvin Cobb, Booth Tarkington, Rex Beach, Augustus Thomas, Eugene O'Neill, Ellis Parker Butler, George Barr Baker, Octavus Roy Cohen, Mary Roberts Rinehart, Arthur Richman, Owen Davis, George Creel, Will and Wallace Irwin, O. O. McIntyre, George Kaufman, Marc Connelly, Floyd Gibbons.

This society was founded by the late Victor Herbert. Its former secretary was Charles K. Harris, who died two weeks ago, and Mr. Oley Speaks is now the secretary. The treasurer is Joe Young, and among its members I might mention George M. Cohan, Carrie Jacobs Bond, Mrs. Ethelbert Nevin, Jerome D. Kern, Irving Berlin, Sigmund Romberg, George Gerschwin, Harry Von Tilzer, Walter Donaldson, Raymond Hubbell, Mrs. Frank Stanton, Oscar Hammerstein, 2d, Otto Harbach, Rudolph Friml, Charles Wakefield Cadman, and Gilbert Spross, every one of these composers well known all over the world.

This organization is simply seeking to protect its own interests, and it has a right to do so.

My attention was just called to this matter of arrangements. That is misunderstood entirely. There is no limitation upon the use of any piece of music that has gone into the public domain, but if you seek to use a particular arrangement, a different harmony, then, of course, if you want that particular arrangement you must respect the rights of the person who made the new arrangement. To reproduce a particular arrangement the infringer must have the score. He must have the music. There can not be an accidental reproduction of any particular arrangement.

Only yesterday some of you gentlemen may have listened to the concert from the Roxy Theater, in New York. If

you did, you heard a new arrangement of the Blue Danube waltz, by Johann Strauss. That does not mean that no one can play the Blue Danube waltz, but if one desires to use that arrangement or if some one else should make an entirely different arrangement of the Blue Danube waltz, then, of course, that arrangement would be protected.

I have frequently heard arguments made on the floor of this House with regard to the question of property rights. It seems to me that all of these questions are aside from the real point, and that one who creates something out of his mind should have the same protection as one who invents a machine. [Applause.]

The last person in the world who should have anything to say as to monopoly is the Radio Corporation of America. [Applause.] Now, listen to this: Suppose the station which the gentleman from Illinois complains of uses a microphone or uses any of the little instruments that go into broadcasting. If they do, they have to pay a royalty to the Radio Corporation of America.

Mr. CHINDBLOM. Will the gentleman yield?

Mr. LaGUARDIA. Not now. There is not a piece of machinery used in reproduction that is not covered by patents owned by one of the greatest monopolies in this country. The Radio Corporation of America is quite willing to license their instruments, license their patents, and collect their royalties, but if they use the creation of another's mind this Radio Corporation becomes the friend of the public and seeks to deny an author or composer of the same rights and benefit they enjoy on their patents.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CHINDBLOM. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for two additional minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. CHINDBLOM. The gentleman made a comment upon my radio station. In the case of the microphone or any other part which has been patented and is owned by the Radio Corporation of America or anybody else, the whole world has notice as to the existence of that patent right and as to the ownership of that property, but here there will be no notice, there will be no registration, and there will be no method by which anybody can find out who is the owner of this automatic copyright. Nobody will know who has written a song and nobody will know whose rights you are violating if you should use that song. I say there ought to be some system of notice or registration as to the ownership of the copyright.

Mr. LaGUARDIA. The gentleman is too good a lawyer to make any such statement. What is the right given in a copyright? The right to make a copy, just as the name implies. Therefore, if I am a musician and I catch by air a composition made by another and I inadvertently use a few bars of the composition, I am not infringing; but if I get a sheet of music containing the gentleman's composition, then I can not copy that music and reproduce it and I ought to be restricted.

Mr. CHINDBLOM. I will say to my friend that the unfortunate thing is that the gentleman from New York is not going to be the judge or jury who will decide the issues in these cases.

Mr. LaGUARDIA. And if the gentleman will look up the decisions he will see the difficulty all plaintiffs have in establishing their rights in matters of infringement. In New York we repeatedly have cases which are thrown out of court.

The CHAIRMAN. The time of the gentleman from New York has again expired.

Mr. BUSBY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Mississippi offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BUSBY: Page 16, line 15, strike out section (c), comprising lines 15 to 25 on page 16 and lines 1 and 2 on page 17.



Mr. BUSBY. Mr. Chairman and gentlemen of the committee, you may not have much sympathy with my fight regarding this bill. I am sure it is difficult for us to always follow and differentiate and tell exactly why we do or do not do things in our votes on the floor of the House. I do not speak for any interests in particular. I am only interested in the welfare of the American public, and the American public is interested in one side of the proposition we are dealing with.

I am offering an amendment which seeks to protect the American public, and I ask your attention for the short time I shall speak on it.

Heretofore we have had in the law something that was not the law of England or any of the other countries that have granted copyright, which we call a statutory penalty. They have tried to make this respectable by saying at the end of the paragraph that it shall be "statutory damages," and not be regarded as a penalty.

What has this amounted to? On the most trivial occasion, my friends, for the most innocent using of copyrighted music, it has subjected the individual to the payment of a fine of \$250 if he used music in connection with his place of business.

Now, this ought not to be. This is a fine, it is a cudgel that is being used by organizations to make people in your district and in mine and in every district of the United States pay them tribute that they are not entitled to. I am willing to leave all of the substantial remedies that are necessary for them to enforce their copyright. First, I am willing to give them an injunction. I am willing to give them the right to all of the profits made. I am willing to give them the right to whatever damages they may have suffered.

Now, in section 15 we begin with infringement remedies, and the first thing we provide for is an injunction, and the bill provides how this remedy may be invoked, and then such damages to the owner of the right infringed, as he may have suffered due to the infringement, as well as all such parts of profits which the infringer shall have made from such infringement as the court may decree to be just and proper; and it also provides for sales and rentals, all of which shall be paid over to him, and, of course, he would naturally recover his court cost.

I see members of this committee who are great lawyers. Tell me where else in a Federal statute you have a statutory damage ascertained that can be used as a leverage with which to extort money from the public. Nowhere else. If a man has a just cause, he can go into court and present his case. If he is entitled to recover anything, he can go into court and recover on the merits of his case.

Why, there are instances such as the Witmark case where a girl was employed to play an organ in an ordinary small movie house. She played by ear the chorus of a piece that took her only 27 seconds to perform, and the court said, in passing on this proposition:

I am constrained under the law to give not less than \$250 damages, court costs, and attorneys' fees, no matter how innocently it was done.

Now, are we striking out the provision here that is the intentional infringement that ranges from two or three hundred dollars up to \$10,000? Why should not everybody go into court and present their claims and collect what is justly due them instead of giving them statutory-ascertained damages. Why not give them the damage that they have suffered, the damage they are entitled to? Why give them a damage like which there is no other such provision in all of the Federal statutes? Let us vote this out of the bill. [Applause.]

Mr. BLOOM. Mr. Chairman, I rise in opposition to the pending amendment.

Mr. Chairman, I would like to bring to the attention of the committee just how the radio people stand on this idea of paying a fee or a license. In order to get the real facts and to understand the position of the Radio Corporation, when the Berne convention was in Rome I wrote to different people, the radio people and the moving-picture people, to

get their ideas about suggestions with respect to the Berne convention. On the 5th of May, 1928, the Radio Corporation of America, from the office of the general attorney, wrote me this letter:

RADIO CORPORATION OF AMERICA,  
New York, May 5, 1928.

Hon. SOL BLOOM,  
Rome, Italy.

MY DEAR MR. BLOOM: Such was the pressure and hurry of preparation for Mr. Sarnoff's journey to Europe that he did not have the opportunity to consider the memorandum concerning international copyright, dated London, March 16, 1927, and therefore I am writing you for him.

The article of the proposed text which seems to be of interest to radio companies is article 11 bis, which reads:

"(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by telegraphy, telephony, radiotelegraphy, or radiotelephony, or by any other similar means for transmitting sounds or pictures.

"(2) Artists who perform literary or artistic works shall enjoy the exclusive right of authorizing the broadcasting of their performance by any of the means referred to in the preceding paragraph."

I would like to say that we see no objection to the article as written and on the whole would be pleased to see it written into an international arrangement and accepted and applied as the law in the United States.

Expressing again the hope that you may have an interesting, instructive, and happy visit abroad, I am,

Cordially,

MANTON DAVIS.

This is from the general attorney of the Radio Corporation of America.

Now, I would like to explain the Authors, Composers, and Publishers' Association; and if I have the time, I will show you the difference between what they are doing in this country and what is being done abroad.

If you did not have the Authors, Composers, and Publishers' Association to-day you would be compelled to keep books with respect to every bit of music that is broadcast in this country, and you would be compelled to send out checks every month, perhaps, for 10 cents, or 20 cents, or \$1.50. It would cost more to keep account of the copyright music that is broadcast to-day, if you did not have the Authors, Composers, and Publishers' Association, than what it is costing at the present time.

In France they keep an account of every song that is broadcast or sung and pay so much on each song; but under this arrangement, about 80 per cent of the authors, composers, and publishers go into this society, and you pay a certain sum for the use of everything copyrighted by this society or the members that belong to the society, and then you are through with it.

With respect to there being a monopoly, of course they come together as an organization, but if we did not have such an organization the cost would be a great deal more than it is at the present time.

Mr. CONNERY. Mr. Chairman, I would like to have the attention of my colleague, the gentleman from Illinois [Mr. CHINDBLOM], because I listened to his statement with reference to the small broadcasting station in his district, and, as I understood it, he did not want them to be held liable for something that was done by them without any notice.

I will ask the gentleman from Illinois: Has it ever occurred to him what would happen, under present law, if a printer who, we might say, was not exactly on the level, left the name of the copyright of the composition off of the publication, although 1,000,000 copies of the song or of the book had been printed?

The broadcasting station could say we received this without notice, we are an innocent purchaser for value received, and we can not be held liable under this. That could be done times innumerable.

In reference to the Association of Authors and Composers we have heard a great deal about monopoly. The reason that organization was established was to stop monopoly. Any man who has written a play or a song or a book knows that he was practically helpless when he was alone competing with the producer or with the publisher or whatever monopoly to which he was obliged to sell the product of his



labor, but the association can deal justly with the purchaser. They can clear up the atmosphere and the people all over the United States can be protected and the broadcasting people say they are justly treated.

I do not like to hear the association called a monopoly because it is far from being one. They are on the same line as the American Federation of Labor; they are protecting the workman in the product of his toil.

Mr. BUSBY. Will the gentleman yield?

Mr. CONNERY. I yield.

Mr. BUSBY. Does not the gentleman know that they are recognized as monopolists by the court?

Mr. CONNERY. That would not make them a monopoly because they are called a monopoly.

Mr. GIFFORD. Will the gentleman yield?

Mr. CONNERY. I yield.

Mr. GIFFORD. The gentleman seems to understand the bill very well. Here is a small restaurant or a hotel, and if they play a piece of copyrighted music, as I understand, they will be fined \$250.

Mr. CONNERY. I was talking the matter over with the gentleman from Texas. I understand the provision in reference to little drug stores and restaurants. In the new law they make the penalty much less to take care of that situation, and it is in much better form in this bill than under the old law. The gentleman from Maine [Mr. SNOW] told of a case in Bangor where a small restaurant keeper was fined \$250 under the present law. As I understand, there is an amendment which will make those conditions better than under the present law.

Mr. GIFFORD. As I understand, this has been interpreted that where an unauthorized performance is given they may be fined \$250. Your amendment, as I understand it, simply says that they will not be fined unless there is evidence that the music was played in the restaurant for profit.

Mr. BEEDY. Mr. Chairman, I understand that there is now pending an amendment to section 15.

The CHAIRMAN. There is an amendment pending to strike out subsection c. The question is on the amendment.

The question was taken, and the amendment was rejected.

Mr. STAFFORD. Mr. Chairman, I offer the following amendment:

The Clerk read as follows:

Page 16, line 6, after the word "pay," strike out the words "such damages," and in line 7, after the word "infringed," insert "if such owner shall have placed on such work the notice described in section 34 hereof and shall also have obtained registration therefor under section 36 hereof, such damages."

Mr. STAFFORD. The proposed amendment is for the relief of innocent persons who use copyrighted works without knowledge that they have been copyrighted.

It compels the owner, seeking to recover damages, to either put on the copyrighted work an imprint, as is provided in section 34, or to make registration as is prescribed in section 36. I can not see any objection to it. The matter has been called to the attention of the House by the gentleman from New York [Mr. SNELL] in a letter which is addressed to him by a Senator. If you require an imprint under section 34 or registration under section 36, why should not you require this man who seeks damages to either make the imprint as provided in section 34, or give notice of registration as in section 36?

Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. CONNERY. How is the owner going to prove against a radio corporation, if the printer leaves off that imprint?

Mr. STAFFORD. Oh, the owner of the copyright should see to it that the imprint is there.

Mr. CONNERY. But if a crook brings it in; what about it?

Mr. STAFFORD. Of course he runs that risk, but he should not hold an innocent purchaser to a claim for damages until there is this imprint. The publisher is his agent. The gentleman is not thinking of the public at all, but only of the author.

Mr. CONNERY. What about connivance between the radio corporation and the thief?

Mr. STAFFORD. The author would either have to register it or give notice.

Mr. LANHAM. My objection is this: That if you require that notice—

Mr. STAFFORD. As a condition precedent to the payment of damages.

Mr. LANHAM. If you require that, those are formalities which will prevent us from entering into the convention of Berne.

Mr. STAFFORD. Oh, no. I have not studied the articles of the convention very closely, but I do not recall any such provision as that.

Mr. BEEDY. That is a question that I have been worried about. Here is a proposal that it seems to me is reasonable as a condition precedent to the recovery of damages in a case. Will that kind of a proposal, if we adopt it, prevent our becoming a member of the Berne convention? Or is it not a general provision when you come to the question of automatic copyrights?

Mr. LANHAM. Of course, it is a question of automatic copyright, but is it copyright automatic, if you require the formality of registration?

Mr. BEEDY. It is not for the purpose of securing the copyright, but for the purpose of recovering damages in a suit. If there is anyone on the committee who can clear this up, I should be very glad to hear from them. I should vote for this amendment, unless it keeps us out of the Berne convention.

Mr. LETTS. It can not be contended that a notice should be required unless it was before the damage had resulted, but I take it the gentleman's notion is that he must show that he gave notice prior to the infringement and incurring of the damages.

Mr. STAFFORD. The institution of the suit.

Mr. LETTS. If that is true, it destroys the idea of the automatic copyright.

Mr. STAFFORD. I can not see why it destroys the idea of automatic copyright. Automatic copyright arises, but the owner of the work in order to recover damages must follow up the prescribed conditions of this bill by either giving notice or registering. I think that is a reasonable requirement and I am surprised that the gentleman is opposed to it.

Mr. BUSBY. Will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. BUSBY. I think I can answer the question of the gentleman from Maine. I have in my hand copies of all three of the conventions, and I am sure that there is no provision in any of these conventions that would conflict with the idea presented in the gentleman's amendment; that is, that after a copyright has been secured, automatically, before an infringement action can be had against some one, the individual must be given at least some notice as provided in the amendment. It would not affect the automatic copyright or our entering into the Berne convention.

Mr. LaGUARDIA. I understand the gentleman's amendment would be simply a condition precedent to the recovery of damages.

Mr. STAFFORD. That is all.

Mr. CONNERY. Do I understand the gentleman's amendment calls for notice which must be given by the owner of a work if the purchaser is an innocent purchaser?

Mr. STAFFORD. Before the owner of the copyright has a right to recover of an innocent producer he must give notice as prescribed in this bill.

Mr. CONNERY. He must, through registration, give notice?

Mr. STAFFORD. Yes.

Mr. BLOOM. Would the gentleman consider this a formality or not?

Mr. STAFFORD. By no means a formality. It is the very essence of the right of the owner to recover damages. Certainly it is not a formality. Why should an innocent producer be mulcted in damages unless the owner exercises



the requirements under this act of filing notice with the register of copyrights, or registering it as provided in this bill. It is not a formality by any means.

Mr. BLOOM. Is it not a fact that the man who infringes has notice beforehand, because he knows that that property does not belong to him, and it is very easy for him to find out who the publisher is?

Mr. STAFFORD. By no means. It does not follow at all. A person may invade the rights of an author without any knowledge that he claims a copyright privilege.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. STAFFORD].

The question was taken; and on a division (demanded by Mr. STAFFORD) there were ayes 39 and noes 47.

Mr. STAFFORD. Mr. Chairman, I ask for tellers.

The CHAIRMAN. The gentleman from Wisconsin [Mr. STAFFORD] asks for tellers. All those in favor of taking this vote by tellers will rise and remain standing until counted. [After counting.] Eighteen Members have risen, not a sufficient number.

So tellers were refused.

So the amendment was rejected.

Mr. GIFFORD. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Massachusetts offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. GIFFORD: Page 16, line 22, after the words "less than," strike out "\$250 and insert "\$10."

Mr. GIFFORD. Mr. Chairman, I want to call to the attention of the House that in the matter of copyrighted photographs the minimum fine may be \$250. The amendment would provide a minimum fine of \$10. The beginning of the section reads:

To pay, at the option of the owner of the infringed, in lieu of actual damages and profits, such statutory damages as to the court shall appear to be just—

But it must not be less than \$250. Are we going to allow a fine of \$250 on the proprietor of some little eating house who, innocently, perhaps not knowing the law but willing to conform thereto, is found to have infringed it? Or in case where a few people are invited to the house, a little music furnished, and a small fee made for the entertainment? Even under such conditions it would technically be "music for profit." It is going altogether too far to have a fine of \$250. Let us retain the minimum and let us get the maximum where it ought to be, but let the court have this chance to cut it from \$250 down to \$10.

Mr. LaGUARDIA. Does the gentleman's amendment refer only to the unauthorized reproduction of motion-picture exhibitions?

Mr. GIFFORD. No; I want it to apply to all of these small gatherings in the hotels or little eating places where they have a little music. Two hundred and fifty dollars is unreasonable, and if the court can determine \$250, why make it a minimum of \$250, which is altogether too much?

Mr. LaGUARDIA. I want to point out that the gentleman's amendment will not do what he seeks to do. The gentleman by his amendment has limited the fine to \$10 for an unauthorized motion-picture exhibition. It makes no difference how small the theater is, he does not make the films himself, and when he gets the films he gets them with a license, so that the gentleman's amendment will not effect the results which he has in mind.

Mr. GIFFORD. I think it is plain, if you read this, that it does apply wholly to that:

Such statutory damages in the case of an unauthorized dramatic performance or unauthorized motion-picture exhibit with or without sound and/or dialogue, or the unauthorized performance for profit of a musical work—

And the court may well say that a little orchestra is hired for profit to bring in customers. I think we can readily say that we ought to protect our own people to the extent that this fine may be made much lower than \$250, and I appeal to the House to vote for the amendment.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Massachusetts [Mr. GIFFORD].

The question was taken; and on a division (demanded by Mr. GIFFORD) there were ayes 40 and noes 48.

Mr. GIFFORD. Mr. Chairman, I respectfully doubt the vote, and ask for tellers.

The CHAIRMAN. All those who favor taking this vote by tellers will stand and remain standing until counted. [After counting.] Fourteen Members have arisen, not a sufficient number.

So tellers were refused.

So the amendment was rejected.

Mr. STAFFORD. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Wisconsin offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. STAFFORD: Page 16, line 16, after the word "infringed," insert "if such owner shall have placed on such work the notice described in section 34 hereof and shall also have obtained registration thereof under section 36 hereof."

Mr. LANHAM. A parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. LANHAM. In what respect does this amendment differ from the amendment which the gentleman from Wisconsin offered formerly, and which amendment was voted down?

Mr. STAFFORD. Only that this applies to cases where the owner of the right infringed does not think he has a substantial right, but comes into court under the law, in lieu of actual damages, and asks for reimbursement in a sum that the court may determine, not less than \$250 and no more than \$1,000. In the other instance, paragraph (b), it related to a case where the owner proceeds against a person against whom he thinks he has a material cause of damage. The amendment is exactly the same except that it applies to those instances where the owner of a copyright can not prove substantial damages, and appeals to the discretion of the court, the judgment of the court, for statutory damages. In the former instance the vote was rather close, being 40 to 47. Under this paragraph above all others the owner should be required to have placed a notice of his copyright with the register of copyrights, or registered it with the register of copyrights before he is entitled to recover any damages.

I submit that there is more merit, more reason for it being here than in the other case. I can imagine where a Member might refuse to vote for it in the other instance but would willingly support it in this case where the owner can not prove substantial damages but must appeal to the judgment and discretion of the court to levy what he thinks will be some damages to reimburse him.

Mr. LANHAM. Was the amendment formerly offered to the same subsection?

Mr. STAFFORD. No. This amendment is now offered to subsection (c), and only applies to those cases where the owner of the copyright can not prove substantial damages but appeals to the court within the range of damages here prescribed. I say that for him to make a case of damages he should at least have given notice by imprinting that fact on the article which he claims to have copyrighted, or else the fact that it has been registered under the provisions of this bill.

Mr. CHINDBLOM. I move to strike out the last word, Mr. Chairman.

Mr. VESTAL. Will the gentleman yield?

Mr. CHINDBLOM. I yield.

Mr. VESTAL. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto close in seven minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. CHINDBLOM. Mr. Chairman, I know that the committee is impatient to reach a conclusion upon this measure, but I wish we would stop for a moment to consider



just what we are doing. Paragraph (c) of this section provides for statutory damages. It is in the present law. In my opinion, it is of very doubtful propriety, even in the present law.

In ordinary cases in the use of property, not a special privilege granted by a statute, as is the right of copyright, but in the use of actual property owned by an individual, you have certain remedies for the protection of your rights. One is by injunction, as is provided in paragraph (a); another is by suit for actual damages, as provided in paragraph (b); but the law does not provide, the Congress of the United States does not provide, for an extraordinary remedy by way of statutory damages in the use of individual property of a citizen which he may have acquired in the course of his profession or his employment. Here is a special provision by act of Congress, and we provide statutory damages, which procedure means you do not have to prove that you suffered any loss at all. All you have to prove is infringement and you get at least \$250 and you may get \$10,000 in the cases mentioned. While it is said in the bill that these statutory damages should not be regarded as penalties, they are penalties in fact.

Even in case of statutory damages you are not entitled to notice of registration of the copyright. You have no way of ascertaining who is the owner of the alleged copyright you have infringed and for which statutory damages are provided.

Mr. Chairman, let us at least in the case of this extraordinary privilege, where statutory damages are granted for the violation of a special privilege, a special right, granted by act of Congress, provide for proper notice of the registration of a copyright to be given to a man who is charged with the violation of the law.

I think the amendment offered by the gentleman from Wisconsin [Mr. STAFFORD] ought to be accepted. I have not been in the position of seeking to obstruct this measure, although there are many things in it which I am sure, upon reflection, the members of this committee will want to have changed before this law is finally enacted, and these things refer particularly to matters other than what we might call the literary copyright. We have to-day the radio broadcasting systems involved in the copyright law, but they were not involved when the original law was adopted. The question of the use of the radio as involved here is for the benefit not only of the large broadcasting stations but of the small broadcasting stations throughout the country and for the great general public, which every evening of the week is entertained by the programs which are given over these stations. Most certainly we should not enact legislation here which will prove oppressive to this new form of popular entertainment, which is available to the rich and poor alike. [Applause.]

Mr. LETTS. Mr. Chairman, an infringer is a wrongdoer, while the owner of a copyright is the innocent sufferer. It is quite conceivable that the manufacturer of rolls or disks, or a publisher, or the operator of a broadcasting station has made extensive use of the production of a copyright holder, and yet that copyright owner is unable to prove the damages which he has suffered or to prove the amount of profits which have been made by the infringer. That is necessarily so oftentimes because all of the facts and circumstances that determine the amount of profit that has been made are in the hands and control of the wrongdoer. So it is quite proper that the innocent sufferer, as the copyright proprietor is in a case of that kind, should have the opportunity of making a selection of this kind and leave it with the court to say, under all the facts and circumstances that are before it, what is right and proper as between the parties.

Mr. LANHAM. Will the gentleman yield?

Mr. LETTS. Yes.

Mr. LANHAM. As a matter of practice, is it not true that those who take out copyrights will both record and give notice? Is not that the present practice and would not that be the practice in the future?

Mr. LETTS. Yes.

Mr. LANHAM. They will protect themselves in that way against infringement, but if we put it in here as a requirement, though it will be done in practice, I think it might militate against our entrance into the Berne convention, which says we must not have formality.

Mr. LETTS. The very idea of automatic copyright is that whenever a man creates a work that is entitled to be copyrighted, he is possessed of the copyright privilege as soon as it is accomplished.

Mr. STAFFORD. Will the gentleman yield?

Mr. LETTS. Yes.

Mr. STAFFORD. If, as stated by the minority leader of this committee, it will be the practice to record and also to file copyrights, then what possible objection can there be to an amendment to protect innocent users?

Mr. LETTS. Because the gentleman makes it a matter precedent to the recovery of damages, and that destroys the very idea of automatic copyright.

Mr. HOGG of Indiana. Will the gentleman yield?

Mr. LETTS. Yes.

Mr. HOGG of Indiana. The gentleman from Iowa is a distinguished jurist. I would like to inquire of him if he knows of a single statute in the State of Iowa which gives a similar right to that which this statute requires be given by every State in the Union.

Mr. LETTS. I am quite sure we have such statutes.

The CHAIRMAN. The time of the gentleman from Iowa has expired. All time has expired. The question is on the amendment offered by the gentleman from Wisconsin.

The question was taken; and on a division (demanded by Mr. STAFFORD) there were—ayes 28, noes 56.

So the amendment was rejected.

The Clerk read as follows:

SEC. 16. The infringer shall further be liable:

(a) To deliver up, on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright or any right comprised therein;

(b) To deliver up, on oath, for destruction, as the court may order, all the infringing copies, records, rolls, and other contrivances or devices, as well as all plates, molds, matrices, or other means for making such infringing copies.

(c) In any action against publishers, distributors, or sellers of periodicals or newspapers for infringement of copyright, the plaintiff shall not be entitled to enjoin the alleged infringement as to any matter claimed to infringe such copyright when any part of such material has theretofore been included in any issue of such periodicals or newspapers upon which the work of manufacture has actually begun, or to sequester, impound, or destroy any issue containing such alleged infringing matter, or the means for publishing such issue except upon proof to the satisfaction of the court that the manufacture of the issue containing such alleged infringing matter, or the first installment thereof, was commenced with actual knowledge that copyright subsisted in the work alleged to have been infringed.

With the following committee amendments:

Page 20, line 15, strike out the word "The" and insert "Except as otherwise provided in this act, the."

The committee amendment was agreed to.

Page 20, strike out all of paragraph (c), beginning in line 25, page 20, and ending in line 12, page 21.

The committee amendment was agreed to.

Mr. BUSBY. Mr. Chairman, I move to strike out the last word. Gentlemen of the committee, as we move along on this bill I hope you will take notice of the fact that only the public is being hit by the provisions of the act we are approving. If you will refer to section 15, paragraph (e), you will find that the publishers are practically exempted. We go on to paragraph (f), and we find that newspaper advertisers, and so forth, are practically exempted. So it is throughout the entire bill. You want to watch the provisions of this bill in order to discover just what interests are asking for the enactment of this legislation. Why all of these newspaper editorials over the country? Why all of this demand made on you by editorial writers, who do not understand the subject of the copyright law? The leading dailies of the country have been putting forth certain individuals to write editorials on this subject, and the editorials show a lack of information on the part of the



editorial writers; you discover that as soon as you read the editorials. It is simply because they are given a "break" in this law. That is why they are in favor of the enactment of this law. Nobody has appeared here and asked you to support this legislation except some one who is going to get something out of it.

What is going to become of the great mass of people back in your district and in mine? I am taking the floor at this opportune time to call your attention to the inequity of the provisions that we are passing and to show how lightly they rest upon the shoulders of the interests that are asking for this legislation and how heavily they rest upon the shoulders of your constituents, who can not speak here except through you.

The pro forma amendment was withdrawn.

The Clerk read as follows:

SEC. 19. Any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, including (but not by way of limitation) any person referred to in section 9 of this act, whether such person's rights were acquired heretofore or hereafter, to grant injunctions to prevent and restrain the violation of any right secured by this act, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any such injunction may be served upon the parties against whom it may be granted anywhere in the United States and its dependencies, and shall be operative throughout the United States and its dependencies and be enforceable by proceedings in contempt or otherwise by any court or judge having jurisdiction of the defendants.

Mr. VESTAL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. VESTAL: Page 22, line 25, after the word "injunctions," insert the words "except as provided in sections 15 and 17 of this act."

The amendment was agreed to.

The Clerk read as follows:

SEC. 20. The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Mr. STAFFORD. Mr. Chairman, I move to strike out the last word.

I rise to inquire as to the need of this provision. I thought under the usual practice the clerk of the court would transmit the necessary papers to the court that would hear the injunction.

Mr. VESTAL. We have left in this bill the old law exactly, and I do not think it hurts anything to leave in this provision.

The pro forma amendment was withdrawn.

The Clerk read as follows:

SEC. 22. In all actions, suits, or proceedings under this act, except when brought by or against the United States, or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

Mr. BUSBY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Mississippi offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. BUSBY: Page 23, line 21, after the word "allowed," insert a period and strike out the remainder of line 21 and all of lines 22 and 23.

Mr. BUSBY. Mr. Chairman and members of the committee, section 22 simply provides that the defendant in an action, even though the damages be inconsequential, shall pay the lawyer's fee of the complainant. Let me read that to you so that you may understand it.

In all actions, suits, or proceedings under this act, except when brought by or against the United States or any officer thereof—

I do not understand what they mean by suit brought by or against the United States, because you can not sue the United States without its permission—

full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

I do not think it is right that we should enact a statute fixing statutory damages and then hire a lawyer for the party to get the statutory damages. This is one of the oppressive features of the present law and it ought to be stricken out.

If you are in favor of having your people pressed down with a cudgel that we call statutory damages and then hiring a lawyer for the other fellow to work on him with, then you will vote against this amendment. All I am seeking to do is to have the provision stricken out which provides them an attorney, in addition to the fact that we have already provided them with statutory damages.

I certainly hope you will vote for this amendment, and I submit the question to you.

Mr. VESTAL. Mr. Chairman, I only desire to say that this is a reenactment of present law and I hope the amendment will not be accepted.

Mr. BUSBY. Mr. Chairman and gentlemen of the committee, I hope to correct some of the evils of the present law as we go along, and that is no excuse for this remaining in the law if it is wrong, and you will see that it is wrong if you will examine it just a moment. We should make some corrections in the present law and leave as little evil in the proposition as possible and I ask you to vote for this amendment and let each party hire his own lawyer.

Mr. CHINDBLOM. Will the gentleman yield?

Mr. BUSBY. Yes.

Mr. CHINDBLOM. If anyone has to bring a suit in a Federal court for damages to his property or to himself, does he get an allowance for attorney's fees?

Mr. BUSBY. He certainly does not. This is the only case I ever heard of.

Mr. CHINDBLOM. Here is a superdivine right granted by Congress itself if you give him attorney's fees.

Mr. LETTS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, it is almost a matter of common knowledge, it seems to me, that in many cases where there is a wrong and it is difficult to prove actual damages, about the only relief the innocent or injured party can have is to ask the court to allow him his attorney's fees.

If this amendment were to prevail it would not be possible to have the court grant such relief to any plaintiff, even in a case where the infringement was wilful and vicious. Here the court may allow an attorney fee, but it is a matter wholly within the discretion of the trial court. I do not believe it will be abused.

Mr. BUSBY. If that is the present law in the case I just referred to, the court said that he was without discretion and must allow an attorney fee.

Mr. LETTS. This law does not read that way. We have the language before us, and you can not so construe it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi.

The question was taken; and on a division (demanded by Mr. BUSBY) there were 34 ayes and 49 noes.

Mr. PARKS. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. PARKS. I understood the Chair to say that there were 34 ayes and 49 noes. I make the point that no quorum is present.

The CHAIRMAN. The gentleman from Arkansas makes the point that no quorum is present. The Chair will count. [After counting.] One hundred and fourteen Members present, a quorum.

So the amendment was rejected.

The Clerk read as follows:

SEC. 23. In any action for infringement, where the plaintiff seeks an accounting of profits, or statutory damages, where any party shows that some third person or persons may claim to be entitled to said profits or statutory damages or some part thereof, by reason of alleged infringement of the same copyright or some right thereunder, or in case it shall appear to the satisfaction of the court that a complete determination can not be had in the absence of other persons claiming or having rights or interests in or under the copyright or some part thereof the court, on application of such party or on its own motion or on petition of such third person or persons, shall give notice to such person or persons of the



pendency of such action and permit him or them to appear therein, and may make such provision with reference to such profits or statutory damages by way of division or otherwise, and adjudicate the respective rights and interests of the several parties to the action as justice may require. The court may require that notice of pendency of the action be given in such manner as the court shall direct to any and all persons of record in the copyright office who may claim to be assignees or licensees or the owners or holders of any rights in or under the copyright in connection with which action may be brought, if the instruments under which such persons claim are registered in the copyright office, or if a claim to the copyright be so registered. The failure of any party directed to be brought in, to appear in the action or suit, or to participate therein, shall not delay the judgment to which the plaintiff is entitled nor debar the plaintiff from prosecuting his suit to a final determination nor from recovering profits or damages to which he may be entitled: *Provided*, That nothing herein contained shall in any way prejudice or delay the rights, if any, of the plaintiff to injunctive relief or any other remedy given under this act, other than for profits or statutory damages as aforesaid.

Mr. BUSBY. Mr. Chairman, I offer the following amendments.

The Clerk read as follows:

Page 23, line 25, after the word "or," strike out the word "statutory."

On page 24, line 2, after the word "or," strike out the word "statutory."

On page 25, line 7, after the word "or," strike out the word "statutory."

Mr. BUSBY. Mr. Chairman, I offer the amendment to make the bill more satisfactory. There is no such thing as statutory damage. There may be a statutory penalty, but there is no statutory damage. It would not weaken the section to strike out the word "statutory."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 25. The orders, judgments, or decrees of any court mentioned in section 18 of this act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

Mr. BUSBY. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 25, under section 25, add a new section, as follows:

"It shall be unlawful for any copyright owner to contract, combine, or conspire with any other copyright owner or owners, either directly or through any agent or agents, to fix a price or royalty rate for the use of any copyrighted work, and any such act shall be a complete defense to any suit, action, or proceeding for any infringement of any copyright of such copyright owner."

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of the provisions in the preceding paragraph contained."

Mr. BUSBY. Mr. Chairman, I desire to call the attention of the committee to the proposed amendment. It simply provides that it shall be unlawful for copyright owners to combine for the purpose of price fixing. That is a principle that goes through our entire system of Government. We have the Sherman antitrust law, but it does not apply to copyrights because the court has held that copyrights are intangible things, and therefore the individuals who own them can combine and create a monopoly and thereby hold up the public in any way they see fit.

That is the situation with regard to copyright owners. Think as little or as much of it as you please. The gentleman from New York [Mr. LaGuardia] a while ago took me to task because I had called in question that monopoly. I have nothing against the individuals who compose the monopoly, but it exists nevertheless. I know they have gone into territory and demanded of individuals money they were not entitled to under the law, and they have received that money and I am ready at any time to show where they got it. The courts said they have not that right, and yet they went out and scared the little individual through their monopoly and he came across. There was one instance in the district of the gentleman from Missouri [Mr. Nelson] in the case of a barber shop, where they collected \$179 because that shop had received music over a radio. That can not be justified. Yet that individual can not protect

himself against that kind of a crowd; they use the same attorneys all of the time.

They may get some local attorney, but the same general attorneys handle their business, and they get all of these fees that the court allows at the rate of \$100 a lawsuit filed as provided in this bill. I am offering this amendment to prevent them from combining for the purpose of price fixing. If they are not permitted to get together and join for the purpose of price fixing well and good, but if you do not adopt this amendment, then they are free agents to do whatever they please with the American people, because their combination is from one coast to the other, and from Canada to the Gulf, and they work all of the territory.

Mr. CLARKE of New York. Mr. Chairman, will the gentleman yield?

Mr. BUSBY. Yes.

Mr. CLARKE of New York. I have been absent for a short time from the Chamber on important business, and would like to know whether the gentleman and the gentleman from New York [Mr. Bloom] will be able to effect a reconciliation in respect to the Berne convention?

Mr. BUSBY. Mr. Chairman, I do not want to be diverted from my amendment in this way. It is worth while. It is the spirit of the Sherman antitrust law, and such a suggestion as that of the gentleman from New York ought not to divert the minds of the committee from a great question like this. We come in here and treat as trivial matters that touch every household. We say that we are fed up with debate and that we want to get through this business and go home but we do not pay any attention sometimes as to how we get through. I appeal to you to support this amendment and protect the American public.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi.

The question was taken; and on a division (demanded by Mr. PARKS) there were—ayes 24, noes 74.

Mr. PARKS. Mr. Chairman, I make the point of order that there is no quorum present.

The CHAIRMAN. The gentleman from Arkansas makes the point of order that there is no quorum present. The Chair will count. [After counting.] One hundred and five Members present, a quorum.

So the amendment was rejected.

The Clerk read as follows:

SEC. 26. Any person who willfully and for profit shall infringe the copyright in any work protected under the copyright laws of the United States, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by fine of not less than \$100 nor more than \$1,000, or both, in the discretion of the court: *Provided*, That no criminal proceeding shall be maintained under the provisions of this act unless the same is commenced within three years after the misdemeanor was committed and no civil proceeding unless the same is commenced within three years after the cause of action arose.

Mr. CLARK of Maryland. Mr. Chairman, I move to strike out section 26.

The CHAIRMAN. The Clerk will report the amendment. The Clerk read as follows:

Amendment by Mr. CLARK of Maryland: Page 25, line 18, strike out all of section 26.

Mr. CLARK of Maryland. Mr. Chairman, I think we have gone far enough in imposing damages upon infringers under this bill. We now advance another step and propose to make such infringements criminal.

Mr. LANHAM. Mr. Chairman, will the gentleman yield?

Mr. CLARK of Maryland. Yes.

Mr. LANHAM. As far as the committee is concerned, the committee is not enamored of this provision. This is a provision of the present copyright law. We did not feel that as a committee we were authorized in eliminating that provision. It is purely a matter for the House as to whether they want to continue that provision or not.

Mr. CLARK of Maryland. Is the gentleman willing to consent to have section 26 stricken out?



Mr. LANHAM. If that be the will of the House, I am entirely willing.

Mr. CLARK of Maryland. I think we have gone far enough in this matter by the imposition of civil penalties, as they might be called.

Mr. LANHAM. So far as I have been able to learn, there have been very few prosecutions under this present statute.

Mr. VESTAL. Only three.

Mr. LANHAM. Only three, so far as I have been able to learn. The committee did not feel it was authorized in putting this out of the bill, inasmuch as it is part of the present law, but is entirely willing to abide by the judgment of the House.

Mr. LaGUARDIA. Is the criminal statute invoked to take care of cases where they willfully print and peddle on the streets infringements of copyrighted matter?

Mr. LANHAM. It is aimed, of course, more at cases of that sort, where there is a violation by those who are not responsible in civil damages.

Mr. LaGUARDIA. What does the gentleman from New York [Mr. Bloom] say as to that?

Mr. BLOOM. They never prosecute in those cases except where the printer keeps on printing after they have taken the plates away.

Mr. ROMJUE. If they do not use the provision, why leave it in?

Mr. CLARK of Maryland. That is it exactly. I am inclined to think that if this bill becomes a law there will be an incentive to use this criminal provision.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland.

The amendment was agreed to.

The Clerk read as follows:

#### MANUFACTURE AND IMPORTATION

SEC. 28. Except as in this act otherwise expressly provided, all copies of any copyright material which shall be distributed in the United States in book, pamphlet, map, or sheet form shall be printed from type set within the limits of the United States or its dependencies, either by hand or by the aid of any kind of typesetting machine, and/or from plates made within the limits of the United States or its dependencies from type set therein; or, if the text be produced by lithographic, mimeographic, photo-gravure, or photo-engraving, or any kindred process or any other process of reproduction now or hereafter devised, then by a process wholly performed within the limits of the United States or its dependencies; and the printing or other reproduction of the text, and the binding of said book or pamphlet, shall be performed within the limits of the United States or its dependencies. Said requirements shall extend also to any copyright illustrations within any book, pamphlet, or sheet, except where the subjects represented are located in a foreign country and/or illustrate any scientific or technical work or reproduce a work of art. Said requirements shall not apply to works in raised characters for the use of the blind, nor to works by authors who are nationals of a foreign country.

Mr. VESTAL. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from Indiana [Mr. Vestal] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. VESTAL: Page 26, lines 11 and 12, strike out the words "except as in this act otherwise expressly provided," change the small "a" in the word "all" to a capital, and after the word "material" insert the words "created by a citizen of the United States."

The amendment was agreed to.

Mr. VESTAL. Mr. Chairman, I offer an amendment, which I send to the desk.

The CHAIRMAN. The gentleman from Indiana [Mr. Vestal] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. VESTAL: Page 27, after the word "dependencies," in line 1, strike out the remainder of section and insert in lieu thereof the following: "Said requirements shall extend also to any copyright illustrations, maps, or charts within any book or pamphlet, or in sheet form. Said requirements shall not apply to works in raised characters for the use of the blind."

The amendment was agreed to.

Mr. ARENTZ. Mr. Chairman, I move to strike out the last word.

I do this to ask a question of the gentleman from Indiana. The question in my mind is that if an American author with a copyright in England or in France prints a book in the United States, can he sell that under the copyright laws of France or England?

Mr. VESTAL. Can he sell the book?

Mr. ARENTZ. Can he sell the book?

Mr. VESTAL. Under this law; yes.

Mr. ARENTZ. You are putting in lines 6 and 7 because that is true in foreign countries and you want to make it international? It says:

Words by authors who are nationals of a foreign country do not have to print their books in the United States.

Mr. VESTAL. The reason we struck that out was because of the first amendment over in section 48. That was stricken out and put in here, "all copies of any copyright material created by a citizen of the United States." It is not necessary, then, to have the last line in this section.

The pro forma amendment was withdrawn.

The Clerk read as follows:

#### COPYRIGHT NOTICE, REGISTRATION OF CLAIMS TO COPYRIGHT, AND DEPOSIT OF COPIES

SEC. 34. No notice of copyright shall be required on any work copyrighted under this act, nor after this act goes into effect, as to works copyrighted under previous acts. The omission of such notice from any work shall not be taken as evidence that no copyright is claimed therein nor affect the validity of the copyright therein. Nevertheless, a legible notice of copyright or a notice with reference to any right included in the copyright in any work may be placed on copies of the work by the owner of the copyright or an assignee or licensee. Such notice shall, if applied in the case of a book or other printed publication, be placed upon its title page or the page immediately following, or upon any of the first 10, or the last 10 pages of text; or in the case of a contribution to a periodical, such notice shall be either placed as aforesaid or under the title or at the foot of the first page of said contribution; but any person who with fraudulent intent shall insert or impress any notice or copyright or words of the same purport in or upon any article in which copyright for the United States does not subsist shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$1,000, and any person who shall knowingly issue or sell any article bearing such notice or words of the same purport when copyright in such article does not subsist in the United States shall be liable to a fine of \$100.

Mr. BUSBY. I move to strike out the last word. I would like some information about section 34. I read that carefully, and it seems to me, in view of section 1 on page 1 and section 9 on page 8, that this is entirely unnecessary and meaningless. It provides that a man may put his name on a book showing that he owns a copyright, but if he does put it on it must be on certain pages.

Then further it provides another proposition which deals with some one wrongfully putting his name on a book. I would like some one to give me some information about the purpose of this.

Mr. LANHAM. If the gentleman will permit me to reply to his question, the purpose of this section is to make it possible for the author of a work to give notice, which he will desire to give; and the circumstances will make it practical for him to give in order for him to protect himself.

Mr. BUSBY. Why is he not required to give notice?

Mr. LANHAM. Because of the fact that such formality would be contrary to automatic copyright, the adoption of which is necessary for us to enter the convention of Berne.

Mr. BUSBY. May I ask the gentleman another question? Why does the gentleman keep talking about the Berne convention, when it has had two revisions, each of which is supposed to be better than the Berne convention?

Mr. LANHAM. I do not agree with the statement that they are better than the Berne convention. The reason I am talking about it is because, if we do not enter the Berne convention by the end of July of this year, we can not enter it under the Berlin convention of 1908 but must enter it under the Rome convention of 1928. If we enter under the Berlin convention of 1908, then no modification of the terms of that convention can be made to affect us against our will.



Mr. BUSBY. Please let me take a little bit of my own time.

Mr. LANHAM. I am simply answering the gentleman's question.

Mr. BUSBY. I want to know what advantage you get in the Berlin convention that you do not get in the newer, revised convention, which is supposed to be better than the old one.

Mr. LANHAM. Well, I do not think it is better than the old one. I am telling the gentleman that if we get in under the Berlin convention of 1908, then, in this copyright convention no amendment can be made, no restriction can be provided for, with which we shall have to comply unless we wish to comply.

But if we should go in under the 1928 convention of Rome, we will have to comply with any restrictions that are made.

Mr. BUSBY. Now, what is the gentleman speaking about? What sections of these conventions is the gentleman saying are better than the others?

Mr. LANHAM. We can not go into that very well in the space of five minutes. I am simply trying to tell the gentleman why it is desirable to go in under the Berlin convention of 1908, in response to the gentleman's inquiry. Our friend from New York, Mr. Bloom, is an expert on the provisions of those conventions, and for an elaboration I will refer the gentleman to the gentleman from New York.

Mr. BUSBY. I will say to both gentlemen that I do not see one particle of advantage in the Berlin convention over the other, and all of these excuses that we ought to adopt such legislation and go in under the Berlin convention are mere piffle, so far as I see the situation.

Mr. O'CONNOR of New York. Will the gentleman yield?

Mr. BUSBY. Yes.

Mr. O'CONNOR of New York. And in the next breath the same gentleman will say that we are not adopting this legislation to get into these conventions, and when you are all through out of their own mouths they admit that the only purpose of this legislation is to join a foreign convention. Such an outrageous proposition was never put before the American Congress. [Applause.]

Mr. LANHAM. Such is not my contention. I want this copyright law for our own land, and for our own land primarily, and the object in passing it now is in order to take care of our own American authors and secure for them the rights to which they are entitled at home and abroad.

Mr. BUSBY. I want to say we are trading the American field to the foreigners in order to secure some foreign fields for our nationals.

Mr. LANHAM. I do not think so. I think we get a lot of the foreign field for ourselves.

Mr. BUSBY. And we are not entitled to it.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

The Clerk read as follows:

SEC. 36. The author or other owner of the copyright in any work or any right, title, or interest therein, may, if he so desires, obtain registration of a claim to copyright in such work or in any of the rights comprised therein, as the case may be, respectively, upon the deposit in the copyright office at Washington of an application accompanied by the registration fee provided by this act and one copy of the work in which or in connection with which copyright is claimed, or the identifying matter prescribed in section 38 of this act.

Registration of a claim to copyright, or of any right therein, shall inure to the benefit of the author as well as all persons claiming through him or under him, as the case may be.

The copyright office shall have no discretion to refuse to receive any application nor to refuse to register such work upon any application being made.

If any person other than the author of any work shall apply for registration under this section, he shall at the time of making said application record in the copyright office any instrument or instruments under which he claims ownership of such copyright or right or rights thereunder, except that if such copyright or right or rights were acquired or contracted for by such person or by any predecessor of his in interest, other than the author, prior to the date on which this act shall take effect, he may record in the copyright office in lieu of such instrument or instruments an affidavit setting forth the nature and extent of his ownership and the essential facts and circumstances upon which his claim

to ownership is based: *And provided further*, That if a publisher of a newspaper or periodical shall apply for registration under this section of a claim to copyright in periodical and/or newspaper rights only in such newspaper or periodical, he may, in lieu of any instrument or instruments affecting serial rights, record in the copyright office an affidavit setting forth the essential facts and circumstances upon which his claim is based. For the purposes of this section, if an instrument of assignment or license establishing the nature and extent of the rights claimed be recorded as hereinbefore provided, no other contracts or agreements relating to such transfer, assignment, or license need be recorded.

Mr. BUSBY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Mississippi offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BUSBY: On page 35, at the end of line 24, strike out the period, insert a colon and the following: "Provided, That the copyright office shall be the sole judge of the sufficiency of the application and the preliminary acts required for registration."

Mr. BUSBY. Mr. Chairman, I wonder if the gentleman from Indiana caught the import of the amendment?

Mr. VESTAL. I think I did.

Mr. BUSBY. The bill provides that—

The copyright office shall have no discretion to refuse to receive any application or to refuse to register such work upon any application being made.

My position is that we should not seek to put the registrar or copyright office in the position of being dealt with except in a reasonable sort of way. I propose this amendment:

*Provided*, That the copyright office shall be the sole judge of the sufficiency of the application and the preliminary acts required for registration.

If he can not be the judge of the business we have entrusted him with and determine the sufficiency of the application and the preliminary steps to a registration, it seems to me he is in a poor position to execute the duties of the office to which he has been assigned.

Mr. VESTAL. He is an administrative officer and not a judicial officer.

Mr. BUSBY. I understand that; but the bill now provides that—

The copyright office shall have no discretion to refuse to receive any application nor to refuse to register such work upon any application being made.

While my amendment provides that the copyright office shall be the sole judge of the sufficiency of the application and the preliminary acts required for registration.

Mr. DYER. Would not the gentleman's amendment preclude any appeal from the action of the copyright office? Would not the gentleman's amendment give the copyright office absolute power without any appeal from the decision?

Mr. BUSBY. It does not make it as hard as it does the other way. I am trying to protect the copyright office, our agency, and it makes no particular difference to me.

Mr. DYER. I do not think the gentleman would favor giving absolute power to an executive of any kind without the right of appeal to the court, if such executive should make a mistake.

Mr. BUSBY. We are bound to assume he would be reasonable in his requirements as to the sufficiency of the application. It ought to be intelligible, and that is the only thing that I propose in the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi.

The amendment was rejected.

The Clerk read as follows:

SEC. 37. The form of application for registration shall state to which of the following classes the work to be registered belongs. The classes of works enumerated below are expressly recognized as subject matter of copyright, but the following specifications shall not be held to limit the subject matter of copyright; nor shall any error in classification in such application affect any right comprised in the copyright:

(a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations, abridgments, adaptations, and translations;

(b) Periodicals, and contributions to periodicals, including newspapers, and contributions thereto;



- (c) Lectures, sermons, addresses, or other matter prepared for oral delivery;
- (d) Dramatic compositions, dramatizations, and dramatico-musical compositions;
- (e) Musical compositions;
- (f) Maps;
- (g) Works of art;
- (h) Reproductions of a work of art, including engravings, lithographs, photo-engravings, photogravures, casts, plastic works, or copies by any other methods of reproduction;
- (i) Drawings and plastic works of a scientific or technical character;
- (j) Photographs;
- (k) Prints and pictorial illustrations, including prints or labels for articles of manufacture and trade-union labels;
- (l) Motion-picture photoplays, with or without sound and/or dialogue;
- (m) Motion pictures other than photoplays, with or without sound and/or dialogue;
- (n) Scenarios (so-called continuities) for motion pictures;
- (o) Works of architecture, models, or designs for architectural works;
- (p) Choreographic works and pantomimes, the scenic arrangement or acting form of which is fixed in writing or otherwise;
- (q) Phonographic records, perforated rolls, and other similar contrivances, by means of which sounds may be mechanically recorded for purposes other than public performance, exhibition, or transmission: *Provided*, Anything to the contrary in this act notwithstanding, that the copyright in such phonographic records, rolls, and contrivances shall consist solely of the exclusive right to print, reprint, publish, copy, and vend said phonograph records, rolls, and contrivances, and that any such copyright and each and every right thereunder, shall be subject to each and every right of the owner of the copyright in any existing or previously existing work, written on said records, rolls, or other contrivances, at all times, in the absence of express contract to the contrary.
- (r) Works not specifically hereinabove enumerated.

Mr. BUSBY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Mississippi offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BUSBY: On page 38, line 15, strike out all of paragraph (q) ending on page 39, line 3.

Mr. BUSBY. Mr. Chairman, I understand this amendment is not objectionable to the committee.

Mr. VESTAL. The committee has gone over this proposition and had an amendment to strike it out. We are perfectly willing that this amendment shall be agreed to.

Mr. STAFFORD. Will the gentleman yield?

Mr. BUSBY. I yield.

Mr. STAFFORD. In striking out paragraph (q), wherein do you correct any condition by reason of the omnibus clause (r), which includes works not specifically herein enumerated?

Mr. BUSBY. I really think that both of those sections ought to go out together.

Mr. VESTAL. I think the last one should remain.

Mr. STAFFORD. If the last one should remain, why strike out subparagraph (q)? The last paragraph is all-pervasive and covers everything imaginable. You are agreeing to strike out paragraph (q), relating to phonographic records, and if you are sincere in your desire why not strike out the omnibus clause which takes in everything? I do not think the gentlemen of the committee have allowed anything to escape them.

Mr. BUSBY. Mr. Chairman, I ask unanimous consent to modify my amendment by striking out subsection (r).

The CHAIRMAN. The gentleman from Mississippi asks unanimous consent to modify his amendment in the manner indicated, and the Clerk will report the modified amendment.

The Clerk read as follows:

Mr. BUSBY asks unanimous consent to include in his amendment subsection (r).

The CHAIRMAN. Is there objection?

There was no objection.

The amendment was agreed to.

The Clerk read as follows:

Sec. 38. The copy deposited for registration may either be printed, typewritten, or be in legible handwriting if the work be a book, or a dramatic, musical, or dramatico-musical composition; a scenario of a motion picture; a lecture, sermon, or address, or the acting form of a choreographic work or a pantomime. For a photograph, there shall be deposited one print from the negative;

for any work of art, or for a model or design for a work of art, or a drawing or plastic work of a scientific or technical character, or any work not particularly specified in this section, a photograph or other identifying reproduction; for a motion picture, the title, and a description or synopsis or prints sufficient for identification; for an architectural work, a photographic or other identifying representation of such work and such drawings as are necessary to identify it. For any work described in subsection (q) of section 37, a description of the work, together with a copy of any work recorded thereon.

Mr. BUSBY. Mr. Chairman, in order to make this section conform to the amendment that has just been adopted, I move to strike out, in line 20, all after the word "for" and all of lines 21 and 22.

The CHAIRMAN. The gentleman from Mississippi offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BUSBY: On page 39, beginning in line 20 with the word "for," strike out the remainder of line 20 and all of lines 21 and 22.

The amendment was agreed to.

The Clerk read as follows:

Sec. 41. Whenever any literary, dramatic, dramatico-musical, musical, or artistic work has been published in book form, it shall be obligatory upon the publisher, except as below provided, to make a deposit in the copyright office or in the mail addressed to the register of copyrights, Washington, D. C., within 30 days after the date of publication, of two complete copies of the best edition thereof then published, for the use of the Library of Congress. Registration for such work may be secured if such copies are accompanied by the application and remittance prescribed in section 36 of this act: *Provided, however*, That the deposit of copies required in this and the following two sections shall not be obligatory in case of any work whose author is a national of a foreign country which is a member of the International Copyright Union or any work which is protected by copyright in the United States under this act by reason of first publication in any country which is a member of the said union, unless and until such work, if it be a book, shall have been republished in the United States under an assignment of the copyright for the United States or under a license to print and sell such book in the United States.

Mr. VESTAL. Mr. Chairman, I offer a committee amendment, which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment: On page 40, line 15, after the word "book," add a comma and the words "pamphlet, map, or printed sheet."

Mr. STAFFORD. Mr. Chairman, I ask for recognition in opposition to the amendment.

As I read this section, it provides for registration of works of a literary character, and so forth, in the copyright office. Wherein does this provision affect the idea of automatic copyright which is carried in the fore part of the bill?

There has been much said here to-day that if we should require the owner of a book to place upon it the imprint that it is copyrighted, this would interfere with automatic copyright as provided in the bill. Here you are prescribing that it shall be registered. Wherein does this provision not interfere with automatic copyright?

Mr. VESTAL. It does not interfere with automatic copyright at all. This is for the use of the Library itself.

Mr. LANHAM. It does not provide for registration, but for deposit.

Mr. STAFFORD. But such deposit is notice to the world when it is deposited in the Library.

Mr. BUSBY. If the gentleman will yield, I want to ask the chairman or the ranking Democratic member of the committee whether or not it is possible for anyone to publish a book under the provisions of this act and yet leave the property in the public domain; that is, make the use of it free from the copyright?

Mr. LANHAM. I do not think so, except he could give permission for its use free.

Mr. BUSBY. Suppose I write a book and want the public to use it without any restriction, how would I do that under the provisions of this proposed copyright law?

Mr. BLOOM. May I answer that question?

Mr. BUSBY. Yes.



Mr. BLOOM. The idea is that if you print in that book or stamp on that music that permission is given to use the book or the sheet of music for any purpose whatsoever, then they will go on and use it.

Mr. BUSBY. Where is that provided for in this proposed law?

Mr. BLOOM. You do not have to have that. You would be giving notice in this way.

Mr. BUSBY. This law will make them subject to a fine if they do not do such things.

Mr. BLOOM. Not any more so than would be done now.

Mr. BUSBY. That does not answer the question at all.

Mr. STAFFORD. If a minister delivers a sermon and publishes it and does not put any such imprint upon it, then he is entitled to the copyright provisions of this bill even though he does not claim such copyright?

Mr. BUSBY. And even though he does not want such copyright. That is the kind of law we are enacting here.

The committee amendment was agreed to.

The Clerk read as follows:

SEC. 42. That in the case of newspapers or other periodicals, one copy of each issue shall be deposited within 30 days after the date of publication for the use of the Library of Congress, which may be registered if accompanied by an application and remittance as provided in section 36: *Provided*, That if several editions of said newspapers are published on one day, a deposit of any one of said editions shall be in compliance with this section.

Mr. VESTAL. Mr. Chairman, I offer a committee amendment to section 42.

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment: Page 41, lines 11 and 12, after the word "periodicals," insert the words "when registration is desired."

The committee amendment was agreed to.

Mr. BUSBY. Mr. Chairman, I move to strike out the last word. Does this section require the filing in the Library of Congress of copies of all the daily newspapers throughout the country?

Mr. LANHAM. I will say to the gentleman that it does not.

Mr. BUSBY. It says that in the case of newspapers or other periodicals one copy of each issue shall be deposited within 30 days after the date of publication for the use of the Library of Congress, which may be registered if accompanied by an application and remittance as provided in section 36.

Mr. LANHAM. But the committee amendment just adopted says that when the registration is desired they must send a copy in the case of such desired legislation. In other cases one would not be wanted.

Mr. BUSBY. As originally drawn it would reach the copy of every daily newspaper in the country.

Mr. STAFFORD. Why does that provision not extend to other publications? Why limit it to newspapers and periodicals?

Mr. BUSBY. Why not apply it to books?

Mr. LANHAM. Two copies of books are provided for in section 41.

Mr. BUSBY. Why not apply the exception to books?

Mr. LANHAM. The Library of Congress is for the purpose of disseminating information for the use of Members of Congress and for people who have access to it.

Mr. BUSBY. I understand all that, but when you make this exception, why not extend the same exception to books that you do to periodicals?

Mr. LANHAM. When you have a great library you ought to be able in that library to find any book published in America.

The Clerk read as follows:

SEC. 43. Should the copies called for by sections 41 and 42 of this act not be deposited as herein provided, the Librarian of Congress may at any time after the date of the default in depositing the work require the publisher of said work to make such deposit, and after the said demand shall have been made, in default of the deposit of a copy or copies of the work in the Library of Congress within three months from any part of the United States, except an

outlying territorial possession or dependency of the United States, or within six months from any outlying territorial possession or dependency of the United States, the publisher of said work shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, but failure to make such deposit shall not in any way affect the validity of the copyright in the said work.

Mr. STAFFORD. Mr. Chairman, I move to strike out the last word. I take it that under the terms of this section if any person prints anything for private distribution and does not deposit it in the Library of Congress he is subject to a penalty. Am I wrong in that contention? The Chairman shakes his head to the effect no. For instance, if a minister prepares a sermon, prints it, and fails to deposit a copy in the copyright office within a certain time, he is guilty of a criminal offense. The section reads:

SEC. 43. Should the copies called for by sections 41 and 42 of this act not be deposited as herein provided, the Librarian of Congress may at any time after the date of the default in depositing the work require the publisher of said work to make such deposit, and after the said demand shall have been made, in default of the deposit of a copy or copies of the work in the Library of Congress within three months from any part of the United States, except an outlying Territorial possession or dependency of the United States, or within six months from any outlying Territorial possession or dependency of the United States, the publisher of said work shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, but failure to make such deposit shall not, in any way, affect the validity of the copyright in the said work.

Mr. LANHAM. How could the Library enforce the deposit of these works?

Mr. STAFFORD. I know of a certain minister in this city that published a sermon for free distribution. If the minister does not provide the Library with a copy of that sermon he is guilty of an offense?

Mr. LANHAM. This provision only applies where the registrar of the copyright office requests it.

Mr. BUSBY. The amendment proposed and adopted by the gentleman from Indiana includes pamphlets and other things and would include sermons.

Mr. LANHAM. This only applies where the Library of Congress requires the author to make such deposit. In other words, if the Library of Congress wants a copy of a sermon I take it that the minister would be glad to furnish it.

Mr. STAFFORD. It makes it mandatory on any person to send a copy to the registrar of the copyright office, otherwise he is guilty of a criminal offense.

The Clerk read as follows:

SEC. 44. The United States postmaster to whom are delivered the articles to be deposited as provided in this act shall, if requested, give a receipt therefor and shall mail them, together with any application for registration of copyright and remittances and any accompanying papers, to the copyright office without cost to the copyright claimant.

Mr. STAFFORD. Mr. Chairman, I move to strike out section 44. I ask the attention of the committee for one moment. Is it proposed to extend the franking privilege to all persons who happen to write books?

Mr. DALLINGER. Mr. Speaker, I make the point of order. Section 44 has already been read and the gentleman seeks to amend section 44.

The CHAIRMAN. The Chair thinks the gentleman from Wisconsin was on his feet endeavoring to secure recognition just as the reading of section 44 was concluded. The point of order is overruled.

Mr. VESTAL. Mr. Chairman, we are simply reenacting the present law.

Mr. STAFFORD. Mr. Chairman, I withdraw the pro forma amendment.

The Clerk read as follows:

SEC. 53. There shall be appointed by the Librarian of Congress a register of copyrights, at a salary of \$8,000 per annum, and one assistant register of copyrights, at a salary of \$6,000 per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

Mr. DYER. Mr. Chairman, I offer the following amendment, which I send to the desk.



The Clerk read as follows:

Amendment offered by Mr. DYER: Page 26, line 25, strike out "\$8,000" and insert in lieu thereof "\$6,000" and on page 47, line 2, strike out "\$6,000" and insert "\$4,000."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. VESTAL. Mr. Chairman, I do not think this amendment should be adopted. These are the present salaries received by these men. We are simply reenacting the present law.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri.

The amendment was rejected.

The Clerk read as follows:

Sec. 56. The register of copyrights shall make an annual report to the Librarian of Congress of all copyright business for the previous fiscal year, which report shall be printed promptly after the close of the fiscal year and also be printed in the annual report on the Library of Congress.

Mr. VESTAL. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Committee amendment: Page 48, lines 6 and 7, after the word "year" in line 6, strike out the remainder of the section.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Sec. 59. The register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of a claim to copyright or rights therein under the provisions of this act, \$2, which sum is to include a certificate of registration under seal: *Provided*, That in the case of any unpublished work registered under the provisions of section 10, the fee for registration with certificate shall be \$1, and in the case of a published photograph the fee shall be \$1 where a certificate is not desired. For every additional certificate of registration made, \$1. For recording and certifying any written instrument provided for in sections 10 or 11 of this act, or for any copy of such assignment, grant, mortgage, or license, duly certified, if not over 300 words in length, \$1; if more than 300 and less than 1,000 words in length, \$2; if more than 1,000 words in length, \$1 additional for each additional 1,000 words or fraction thereof over 300 words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, \$2. For indexing the transfer of the ownership of copyrighted works or of any right therein, 10 cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument evidencing the same. For any requested search of copyright office records, indices, or deposits, \$1 for each full hour of time consumed in making such search.

Mr. VESTAL. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Page 49, line 4, change the section number from 10 to 36.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. VESTAL. I offer the following amendment.

The Clerk read as follows:

Section 59, page 49, line 11, after the word "certified," strike out the remainder of line 11 and all of lines 12 to 16, including the word "words" in line 16, and insert in lieu thereof the following: "\$1 for each copyright office record-book page or fraction thereof, up to five pages, and 50 cents for each such page or fraction thereof beyond five pages."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. CHINDBLOM. Mr. Chairman, I would like to know whether these fees apply to photographs.

Mr. VESTAL. This amendment is offered at the suggestion of the Register of Copyrights, so that the fees and registration in all cases shall be exactly alike, based on the same proposition.

Mr. CHINDBLOM. That means that there will be a same fee for registering photographs?

Mr. VESTAL. For recording and certifying any written instrument.

Mr. CHINDBLOM. Has the committee any views on the matter of copyrighting photographs? The automatic copy-

right, of course, includes photographs, and the control of the photograph is in the photographer, not in the person photographed.

Mr. STAFFORD. Oh, as I understand the phraseology of this bill, the right to the copyright is with the person who sits for the photograph, not with the photographer. That is my recollection of the reading of the bill.

Mr. VESTAL. The photographer has no right in the matter.

Mr. CHINDBLOM. At the present time the photographer who registers the photograph in the copyright office has the control of that photograph.

Mr. STAFFORD. Yes; under existing law, but I refer the gentleman to page 38.

Mr. CHINDBLOM. The word "photographs" is there, but it does not say as to who is the owner of the copyright.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana.

The amendment was agreed to.

The Clerk read as follows:

Sec. 60. A seal shall be provided and used in the copyright office and be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

Mr. VESTAL. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Page 50, line 1, strike out the words "provided and."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

#### ENTRY OF THE UNITED STATES INTO THE INTERNATIONAL COPYRIGHT UNION

Sec. 61. Copyright shall subsist in the work of alien authors by virtue of adherence to the International Copyright Union, signed at Berne, Switzerland, September 9, 1886, and revised at Berlin, Germany, November 13, 1908, and to the "additional protocol" to the said convention executed at Berne, Switzerland, March 20, 1914, as provided by this act, on and after the date on which the adherence of the United States to the convention creating an international union for the protection of literary and artistic works goes into force: *Provided, however*, That the duration of copyright in the United States shall not in the case of the work of any such alien author extend beyond the date at which such work has fallen into the public domain in the country of origin as defined by said convention: *And provided further*, That as to copyrights in works not previously copyrighted in the United States no right or remedy given pursuant to this act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States prior to the date of said proclamation, and the author or other owner of such copyrights or persons claiming under him shall not be entitled to bring action against any person who has, prior to such date, taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

Mr. LANHAM. Mr. Chairman, I offer the following amendment in order to get the name properly in the bill.

The CHAIRMAN. The gentleman from Texas offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 50, strike out lines 7, 8, and 9, including the word "union," in line 9, and insert in lieu thereof the following:

"Copyright, as herein provided, shall subsist in the work of alien authors by virtue of adherence of the United States to the convention of Berne for the protection of literary and artistic works"; and on page 50, lines 14 and 15, strike out the words "convention creating an international union" and insert in lieu thereof the words "said convention of Berne." And on page 51, line 2, strike out the words "of said proclamation" and insert in lieu thereof the following: "on which the adherence of the United States to said convention of Berne for the protection of literary and artistic works becomes effective."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. STAFFORD. I rise in opposition to the amendment. I notice that in many places in the bill reference has been made to "The International Copyright Union," wherein the gentleman has now proposed amendments to have it conform to "the convention of Berne." In the earlier part of



the bill such amendments were made, but there are several other places in the bill where it has not been done.

Mr. LANHAM. Will the gentleman kindly specify?

Mr. STAFFORD. Well, I can not now designate them specifically, but in going through the bill there were other instances where the phrase "International Copyright Union" was referred to.

Mr. LANHAM. I do not recall any other than those to which attention has been called.

Mr. STAFFORD. Perhaps not.

Mr. LANHAM. Mr. Chairman, I ask unanimous consent to modify the amendment offered by me to include an amendment to the title of this section.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The Clerk will report the modification to the amendment.

The Clerk read as follows:

Amendment offered by Mr. LANHAM to the committee amendment: In line 5, on page 50, after the second word "the," strike out "International Copyright Union" and insert in lieu thereof "convention of Berne for the protection of literary and artistic works."

The CHAIRMAN. The question is upon agreeing to the amendment offered by the gentleman from Texas.

The question was taken; and on a division (demanded by Mr. PARKS) there were ayes 73 and noes 1.

Mr. PARKS. Mr. Chairman, I object to the vote on the ground that a quorum is not present.

The CHAIRMAN. The Chair will count. [After counting.] One hundred and forty-one Members are present, a quorum.

The amendment to the committee amendment was agreed to.

The committee amendment as amended was agreed to.

Mr. LANHAM. Mr. Chairman, I ask unanimous consent to return to section 41 for the purpose of offering an amendment to make that section conform in its verbiage to the amendment just adopted by the committee.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment by Mr. LANHAM: On page 41, line 3, strike out the words "International Copyright Union" and insert in lieu thereof "convention of Berne for the protection of literary and artistic works."

The amendment was agreed to.

The Clerk read as follows:

SEC. 65. That this act shall go into effect on the 1st day of April, 1931.

Mr. VESTAL. Mr. Chairman, I offer an amendment. On page 52, line 3, strike out "April" and insert in lieu thereof "July."

The CHAIRMAN. The gentleman from Indiana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment: On page 52, line 13, strike out the word "April" and insert "July."

The amendment was agreed to.

Mr. TILSON. Mr. Chairman, I think a request should be made that the Clerk change the cross references where sections have been stricken out or the number changed.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The CHAIRMAN. The committee automatically rises under the rule.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. HOCH, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee, having had under consideration the bill (H. R. 12549) to amend and consolidate the acts respecting copyright and to permit the United States to enter the In-

ternational Copyright Union, under the rule he reported the same back to the House with sundry amendments, adopted by the Committee of the Whole.

The SPEAKER. Under the rule the previous question is ordered on the bill and all amendments to final passage.

Is a separate vote demanded on any amendment?

Mr. LANHAM. Mr. Speaker, I demand a separate vote on the amendment offered by the gentleman from Indiana [Mr. HOGG] to section 1.

Mr. VESTAL. Mr. Speaker, I demand a separate vote on the amendment known as the Busby amendment to section 1, page 4, line 18.

The SPEAKER. Is a separate vote demanded on any other amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

Mr. BUSBY. Mr. Speaker, may I ask what the attitude is with regard to proceeding further with the bill this afternoon?

Mr. VESTAL. The gentleman means whether or not we shall vote on the amendments this afternoon?

Mr. BUSBY. Yes.

Mr. VESTAL. Not if it will require a roll call.

Mr. BUSBY. A great many have asked me to insist on a roll call, and that is the reason I wanted to direct your attention to it. If we vote on the amendments they want a roll call, and I suggest we adjourn and carry the bill over until to-morrow.

Mr. VESTAL. Mr. Speaker, as the matter stands, the vote on the amendments will come the first thing to-morrow.

The SPEAKER. The vote on the first amendment will be in order immediately after the reading of the Journal and the disposition of matters on the Speaker's table, and then the vote on the second amendment.

Mr. VESTAL. And then on the passage of the bill?

The SPEAKER. Yes.

#### MESSAGE FROM THE PRESIDENT—PAYMENT OF FOREIGN CLAIMS (S. DOC. NO. 252)

The SPEAKER laid before the House the following message from the President of the United States, which was read and with the accompanying papers referred to the Committee on Foreign Affairs and ordered printed.

#### To the Congress of the United States:

I transmit herewith a report by the Secretary of State recommending the enactment of legislation for the following purposes:

#### I

For the relief of the widow, Raimunda Valladares de Calderon, and children of Justo Calderon, a native Nicaraguan, who was shot to death on January 30, 1930, by Chief Pharmacist's Mate Willie H. Williamson, United States Navy, who was serving as a second lieutenant in the Nicaraguan National Guard.

#### II

For reimbursement of Demetrio Valle, a Nicaraguan citizen, which arose from bombing operations of a United States Marine Corps airplane near Palsagua, Nicaragua, on or about April 11, 1929.

#### III

For reimbursement of Salvador Buitrago Diaz, owner of the newspaper La Tribuna, of Managua, Nicaragua, for damage done to his property by United States Marines on February 6, 1921.

#### IV

For reimbursement of Dr. Enrique Klinghoffer and Dr. Br. Rap-poccioli for payment for professional services rendered and medical supplies furnished to Charles Stevens McReynolds, deceased, former major, United States Marine Corps.

#### V

For payment of a claim against the Navy Department in the sum of \$1,500 United States currency transmitted to that department by the commander in chief, United States Asiatic Fleet, after a consultation with the American consul general at Shanghai regarding proper compensation in the circumstances in behalf of Ling Mau Mau, a citizen of China, for personal injuries received by him as a result of a collision between a Chinese junk on which he was aboard and the United States naval vessel *Whipple*, which occurred in the Whangpoo River on May 20, 1930.

#### VI

For payment of a claim of Miss Janet Hardcastle Ross, a Canadian citizen, for compensation for personal injuries resulting from the dropping of a dummy bomb by a United States Navy airplane near Coronado, Calif., on March 27, 1929.



## VII

For payment of claims presented by the Governments of Great Britain and of Japan for reimbursement by the Government of the United States of its share in the expenses incurred by the Governments of Great Britain and of Japan in connection with the proposed deportation of enemy aliens from China to Australia during the World War.

## VIII

To provide \$15,000 for the expenses of the Fourth Pan American Commercial Conference to be held in Washington in 1931.

## IX

Report and recommendation concerning a claim against the Navy Department in the sum of \$15.59 United States currency in behalf of N. J. Moosa, a citizen of Great Britain, for reimbursement of expenses of medical services and hospital treatment incurred by him as the result of a collision at Shanghai, China, on September 13, 1928, between a United States Marine Corps truck and a broker's trap in which he was riding.

## X

To provide \$50,000 for the expenses of participation by the United States in the World's Grain Exhibition and Conference to be held in Canada in 1932.

The recommendations of the Secretary of State have my approval, and I request the enactment of legislation for the purposes stated in order that this Government may carry out the projects and meet the obligations outlined in the report.

HERBERT HOOVER.

THE WHITE HOUSE, January 12, 1931.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to—  
Mr. MONTET (at the request of Mr. SANDLIN) for four days, on account of his attendance at the flood-control meeting in Chicago.

Mr. FITZPATRICK, for an indefinite period, on account of illness in family.

Mrs. NORTON, for an indefinite period, on account of illness.

Mr. GARRETT, for 10 days, on account of illness.

Mr. BANKHEAD, for to-day and to-morrow, on account of important business.

## ENROLLED BILL SIGNED

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H. R. 11201. An act to authorize a preliminary examination of the Fox River, Wis., for the purpose of flood control.

## BILL PRESENTED TO THE PRESIDENT

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

H. R. 11201. An act to authorize a preliminary examination of the Fox River, Wis., for the purpose of flood control.

## ADJOURNMENT

Mr. VESTAL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 29 minutes p. m.) the House adjourned until to-morrow, Tuesday, January 13, 1931, at 12 o'clock noon.

## COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Tuesday, January 13, 1931, as reported to the floor leader by clerks of the committees:

## COMMITTEE ON NAVAL AFFAIRS

(10.30 a. m.)

To authorize the construction of certain naval vessels. (H. R. 14688.)

## COMMITTEE ON APPROPRIATIONS

(2 p. m.)

Independent offices appropriation bill.

District of Columbia appropriation bill.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

768. A letter from the Public Printer of the United States, transmitting report of an accumulation of papers which are not needed in the transaction of public business and have no permanent value or historical interest; to the Committee on Disposition of Useless Executive Papers.

769. A letter from the secretary of the United States Civil Service Commission, transmitting report of an accumulation of papers which are not needed in the transaction of public business and have no permanent value or historical interest; to the Committee on Disposition of Useless Executive Papers.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. SNELL: Committee on Rules. H. Res. 334. A resolution providing for the consideration of House Joint Resolution 447, a joint resolution making an appropriation to carry out the provisions of the public resolution entitled "Joint resolution for the relief of farmers in the drought and/or storm stricken areas of the United States," approved December 20, 1930; without amendment (Rept. No. 2232). Referred to the House Calendar.

Mr. SWING: Committee on the Public Lands. H. R. 13547. A bill to safeguard the validity of permits to use national-forest lands; with amendment (Rept. No. 2233). Referred to the House Calendar.

Mr. HAUGEN: Committee on Agriculture. H. R. 12479. A bill to coordinate the agricultural experiment-station work and to extend the benefits of certain acts of Congress to the Territory of Porto Rico; without amendment (Rept. No. 2234). Referred to the Committee of the Whole House on the state of the Union.

## CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 16026) for the relief of George Lee Moreland; Committee on Military Affairs discharged, and referred to the Committee on Naval Affairs.

A bill (H. R. 15978) granting an increase of pension to Dora E. Hutchens; Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HILL of Alabama: A bill (H. R. 16074) for the relief of the State of Alabama and certain former officers of the Alabama National Guard; to the Committee on Military Affairs.

By Mr. COOKE: A bill (H. R. 16075) to authorize the erection of a Veterans' Bureau hospital in the western part of the State of New York, in or near the city of Buffalo, and to authorize the appropriation therefor; to the Committee on World War Veterans' Legislation.

By Mr. MANLOVE: A bill (H. R. 16076) to amend the retirement act approved May 29, 1930; to the Committee on the Civil Service.

By Mr. TEMPLE: A bill (H. R. 16077) authorizing an appropriation for the payment of claims arising out of the occupation of Vera Cruz, Mexico, by American forces in 1914; to the Committee on Foreign Affairs.

By Mr. LEAVITT: A bill (H. R. 16078) to amend the act approved June 2, 1930, providing for a memorial to Theodore Roosevelt for his leadership in the cause of forest conservation; to the Committee on the Library.

By Mr. ACKERMAN: Concurrent resolution (H. Con. Res. 45) authorizing the issuance and sale of one billion 2-cent stamps in connection with drought relief; to the Committee on the Post Office and Post Roads.



## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ANDREW: A bill (H. R. 16079) granting a pension to Lizzie E. Goodrich; to the Committee on Invalid Pensions.

By Mr. BACHARACH: A bill (H. R. 16080) granting a pension to Mary A. M. Lafferty; to the Committee on Pensions.

By Mr. BAIRD: A bill (H. R. 16081) granting a pension to Lillian Cornwell; to the Committee on Invalid Pensions.

By Mr. BRUMM: A bill (H. R. 16082) granting a pension to William Irving (with accompanying papers); to the Committee on Invalid Pensions.

By Mr. CARTER of Wyoming: A bill (H. R. 16083) for the relief of George W. Parkins; to the Committee on Claims.

By Mr. CHRISTGAU: A bill (H. R. 16084) granting a pension to Mary Tompkins; to the Committee on Invalid Pensions.

By Mr. COCHRAN of Pennsylvania: A bill (H. R. 16085) granting a pension to Emma V. Bateman; to the Committee on Invalid Pensions.

By Mr. FULLER: A bill (H. R. 16086) granting a pension to Harriet A. Davis; to the Committee on Invalid Pensions.

By Mr. GRANFIELD: A bill (H. R. 16087) authorizing the President to order Louis U. LaBine before a retiring board for a hearing of his case and upon the findings of such board to determine whether or not he be placed on the retired list with the rank and pay held by him at the time of his discharge; to the Committee on Military Affairs.

Also, a bill (H. R. 16088) for the relief of Myles McDonagh; to the Committee on Military Affairs.

By Mr. GREENWOOD: A bill (H. R. 16089) for the relief of William Byerly; to the Committee on Military Affairs.

By Mr. HARE: A bill (H. R. 16090) for the relief of Walter Couch; to the Committee on War Claims.

By Mr. HOOPER: A bill (H. R. 16091) granting a pension to Rhoda Burroughs (with accompanying papers); to the Committee on Invalid Pensions.

By Mr. JONES of Texas: A bill (H. R. 16092) granting a pension to Mary O. Jackson; to the Committee on Pensions.

By Mr. LEAVITT: A bill (H. R. 16093) granting an increase of pension to Fay B. Weekley; to the Committee on Invalid Pensions.

By Mr. LETTS: A bill (H. R. 16094) granting an increase of pension to Eliza E. Abbott; to the Committee on Invalid Pensions.

By Mr. McREYNOLDS: A bill (H. R. 16095) to authorize the appointment of Arthur F. Cooley as a warrant officer, United States Army, and place him on the retired list as a warrant officer; to the Committee on Military Affairs.

Also, a bill (H. R. 16096) for the relief of R. P. McCarter; to the Committee on Claims.

By Mr. MORGAN: A bill (H. R. 16097) granting an increase of pension to Sarah M. Beaumont; to the Committee on Invalid Pensions.

By Mr. MOUSER: A bill (H. R. 16098) granting an increase of pension to Margaret C. Lloyd; to the Committee on Invalid Pensions.

By Mr. PATMAN: A bill (H. R. 16099) granting a pension to Tom F. Taylor; to the Committee on Pensions.

By Mr. PURNELL: A bill (H. R. 16100) granting a pension to Pearl Morphew Sanders; to the Committee on Invalid Pensions.

By Mr. RICH: A bill (H. R. 16101) granting an increase of pension to Mary Jane Sherwood; to the Committee on Invalid Pensions.

By Mr. SPEAKS: A bill (H. R. 16102) granting a pension to Ella S. Weaver; to the Committee on Invalid Pensions.

By Mr. SPEARING: A bill (H. R. 16103) granting an increase of pension to Irma C. Manion; to the Committee on Pensions.

By Mr. STONE: A bill (H. R. 16104) granting a pension to Mary E. Godsey (with accompanying papers); to the Committee on Pensions.

By Mr. SWING: A bill (H. R. 16105) for the relief of certain stockholders of the Santa Ana Cooperative Sugar Co., of Santa Ana, Calif.; to the Committee on Claims.

By Mr. TILSON: A bill (H. R. 16106) granting an increase of pension to Nellie N. Taft; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16107) granting an increase of pension to Annie Sheridan; to the Committee on Invalid Pensions.

By Mr. WILLIAMSON: A bill (H. R. 16108) granting a pension to M. Cummins, otherwise known as Milton M. Cummins or Milton M. Cummings; to the Committee on Pensions.

By Mr. WOLVERTON of West Virginia: A bill (H. R. 16109) granting an increase of pension to Martha E. Lemmons; to the Committee on Invalid Pensions.

## PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8519. Petition of Bismarck Chapter, No. 96, the National Sojourners, urging Congress to withdraw Federal aid from schools and colleges having compulsory military training; to the Committee on Military Affairs;

8520. Petition of Industrial Club of St. Louis, urging an early amendment of the Volstead Act; to the Committee on the Judiciary.

8521. Petition of the Fleet Reserve Association, favoring the payment of the face value of the adjusted-compensation certificates as covered in House bill 3493; to the Committee on Ways and Means.

8522. By Mr. BLOOM: Petition of residents of New York State, urging the passage of House bill 7884, providing for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8523. By Mr. BRUNNER: Petition of Edalene G. Shane of 3420 Ninety-ninth Street, Corona, N. Y., and 75 other residents of the second Queens Borough, New York district, favoring the passage of House bill 7884 for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8524. By Mr. CARTER of Wyoming: Petition of M. E. Johnson and others, requesting the passage of House bill 7884; to the committee on the District of Columbia.

8525. By Mr. CRAIL: Petition of approximately 50 veterans of the National Military Home, California, requesting legislation authorizing the immediate payment of the World War veterans' adjusted-compensation bonus; to the Committee on Ways and Means.

8526. Also, petition of approximately 300 veterans of the National Military Home, California, requesting legislation authorizing the immediate payment of the World War veterans' adjusted-compensation bonus; to the Committee on Ways and Means.

8527. Also, petition of approximately 40 veterans of West Los Angeles, Calif., requesting legislation authorizing the immediate payment of the World War veterans' adjusted-compensation bonus; to the Committee on Ways and Means.

8528. Also, petition of certain veterans of Los Angeles, Calif., urging the passage of House bill 3493; to the Committee on Ways and Means.

8529. Also, petition of National Military Home, California, urging the passage of House bill 3493; to the Committee on Ways and Means.

8530. By Mr. CHRISTGAU: Resolution adopted by members of the Earl H. Neville Post, No. 1287, Veterans of Foreign Wars of the United States, Winona, Minn., in favor of full cash payment of all adjusted-service certificates; to the Committee on Ways and Means.

8531. By Mr. CULLEN: Petition of the Municipal War Veterans' Memorial Association of the City of New York (Inc.), urging the Government to give a proportional amount of positions in the Federal census, starting January 10, 1931, to war veterans of the United States military and naval forces; to the Committee on the Census.



8532. Also, petition of the American Federation of Labor, in its fiftieth annual convention, urging the passage of House Joint Resolution No. 334, introduced by Congressman REED of Illinois, to amend the radio act of 1927 by providing that the Federal Radio Commission shall assign three cleared-channel broadcasting frequencies to the Departments of Agriculture, Labor, and Interior, which shall be licensed to the radio stations recommended by the heads of those Government departments as being most representative of the labor, agricultural, and educational interests of the United States; to the Committee on the Merchant Marine and Fisheries.

8533. By Mr. DEMPSEY: Petitions of 106 residents of the fortieth (New York) congressional district, urging the passage of House bill 7884, providing for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8534. By Mr. FENN: Petitions of residents of Hartford, Conn., and vicinity, favoring the passage of House bill 7884, prohibiting experiments on living dogs in the District of Columbia; to the Committee on the District of Columbia.

8535. By Mr. FINDLEY: Petition of certain World War veterans of Williamsburg, Ky., urging immediate cash payment of the adjusted-service certificates; to the Committee on Ways and Means.

8536. By Mr. GAVAGAN: Petition of William C. Paster and others, urging the passage of House bill 7884, for exemption of dogs from vivisection; to the Committee on the District of Columbia.

8537. By Mr. GLOVER: Petition of citizens of Hot Spring County, Ark., urging Congress to legislate regarding employment of persons of old age; to the Committee on the Judiciary.

8538. Also, petition of citizens of Desha County, Ark., protesting the drainage tax; to the Committee on Irrigation and Reclamation.

8539. By Mr. HUDSON: Petition of citizens of Wayne, Oakland, and Genesee Counties of the sixth district of Michigan, urging the passage of House bill 7884, for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8540. By Mr. KVALE: Petition of Bricklayers, Masons, and Plasterers International Union, at the twentieth annual convention of the Minnesota State conference, resolving that the convention go on record as unanimously in favor of repealing the eighteenth amendment; to the Committee on the Judiciary.

8541. By Mr. MARTIN: Petition of sundry citizens of Bristol County, Mass., urging enactment of House bill 7884, for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8542. By Mr. O'CONNOR of New York: Resolutions of sundry citizens of the city of New York, favoring the passage of House bill 7884; to the Committee on the District of Columbia.

8543. By Mr. SELVIG: Petition of American Legion Post, of Red Lake Falls, Minn., urging enactment of the bill providing for payment of adjusted-compensation certificates in cash to the veterans; to the Committee on Ways and Means.

8544. Also, petition of Obert J. Rustad and 59 others, residents of Hawley, Minn., urging the enactment of bill providing for the immediate payment of the face value of World War adjusted-service compensation certificates; to the Committee on Ways and Means.

8545. By Mr. WOLVERTON of West Virginia: Petition of Thomas B. McQuain, post adjutant, Post No. 42, Department of West Virginia, American Legion, Glenville, W. Va.; Stanley F. Dobbins, West Virginian disabled World War veteran, of Albuquerque, N. Mex.; and Meuse-Argonne Post, No. 573, Veterans of Foreign Wars, of Clarksburg, W. Va., urging Congress to take favorable action on proposed legislation to pay off the World War veterans' adjusted-compensation certificates; to the Committee on Ways and Means.

8546. Also, petition of the Clarksburg Drug Co., of Clarksburg, W. Va., by S. L. White, manager; H. Kalbitzer & Son, of Wheeling, W. Va., by H. C. Kalbitzer, manager; and Greer &

Laing, of Wheeling, W. Va., by F. A. Ebeling, manager, urging Congress to take favorable action on the Capper-Kelly fair trade bill; to the Committee on Interstate and Foreign Commerce.

8547. Also, petition of Ervin Dorsey, vocational agricultural instructor, University High School, Morgantown, W. Va.; Truman Tolley, Bernard Ullom, C. W. Douglas, Everett Davis, and Wilson Randolph, of Grant District High School, Lost Creek, W. Va., urging Congress to take favorable action on the Capper-Reed bill to provide additional Federal funds for vocational education in trades, industries, and commerce in high schools; to the Committee on Education.

8548. By Mr. YATES: Petition of J. H. Wallovick, president American Rug & Carpet Co., 910 Michigan Boulevard South, Chicago, Ill., urging the defeat of any legislation tending to increase first-class postage rates; to the Committee on the Post Office and Post Roads.

8549. Also, petition of J. P. Mentzer, president Mentzer Bush & Co., Chicago, protesting the increase of first-class postage from 2 cents to 2½ cents per ounce; to the Committee on the Post Office and Post Roads.

8550. Also, petition of J. Klein & Sons, 3544-46-48 South Morgan Street, Chicago, Ill., urging Congress to defeat any legislation intended to increase the first-class postage rate; to the Committee on the Post Office and Post Roads.

## SENATE

TUESDAY, JANUARY 13, 1931

(Legislative day of Monday, January 5, 1931)

The Senate met in executive session at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination of Edgar B. Brossard, of Utah, to be a member of the United States Tariff Commission for the term ending June 16, 1932? The Senator from Arkansas [Mr. ROBINSON] is entitled to the floor.

Mr. FESS. Mr. President, will the Senator from Arkansas yield?

The VICE PRESIDENT. Does the Senator from Arkansas yield to the Senator from Ohio?

Mr. ROBINSON of Arkansas. I yield.

### APPROVAL OF THE LEGISLATIVE JOURNAL

Mr. FESS. I ask unanimous consent, as in legislative session, for the approval of the legislative Journal for the calendar days of January 5 to 10, both inclusive.

The VICE PRESIDENT. Is there objection?

Mr. ROBINSON of Arkansas. May I ask the Senator the occasion for this unusual proceeding?

Mr. FESS. The Journal clerk desires it because of the amount of Journal work involved, which is held up until the legislative Journal is approved.

Mr. ROBINSON of Arkansas. What period does the request cover?

Mr. FESS. The 5th to the 10th of January.

Mr. ROBINSON of Arkansas. The Journal has not been read and approved in the meantime?

Mr. FESS. No.

Mr. ROBINSON of Arkansas. Why?

Mr. FESS. Because we are still in the legislative day of Monday, January 5.

Mr. ROBINSON of Arkansas. We have been in recess since that time?

Mr. FESS. Yes.

Mr. ROBINSON of Arkansas. I have no objection.

The VICE PRESIDENT. Is there objection to the request of the Senator from Ohio? The Chair hears none, and the legislative Journal for the period indicated is approved.

### CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. Does the Senator from Arkansas yield for that purpose?

Mr. ROBINSON of Arkansas. I do.